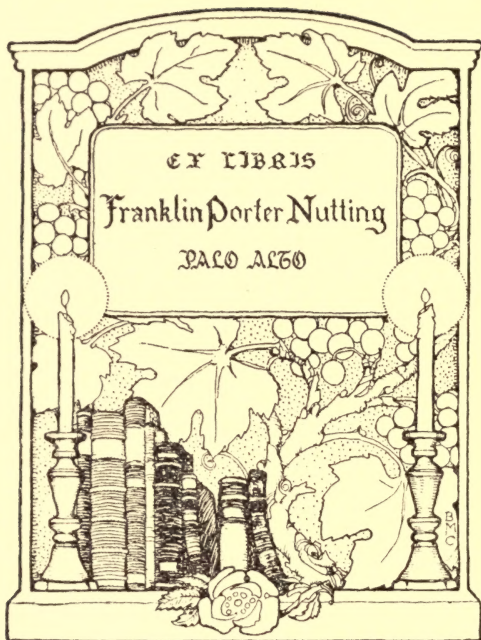




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# HISTORY OF THE UNITED STATES

FROM THE COMPROMISE OF 1850

TO

THE MCKINLEY-BRYAN CAMPAIGN OF 1896

VOL. VI



THE MACMILLAN COMPANY  
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ATLANTA • SAN FRANCISCO

MACMILLAN & CO., LIMITED  
LONDON • BOMBAY • CALCUTTA  
MELBOURNE

THE MACMILLAN CO. OF CANADA, LTD.  
TORONTO



HISTORY  
OF THE  
UNITED STATES  
FROM  
THE COMPROMISE OF 1850  
TO  
THE McKINLEY-BRYAN CAMPAIGN  
OF 1896

BY  
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NEW EDITION  
IN EIGHT VOLUMES

VOL. VI  
1866-1872

New York  
THE MACMILLAN COMPANY  
LONDON: MACMILLAN & CO., LTD.  
1920

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Set up and electrotyped. Published November, 1906.  
New edition in eight volumes, November, 1920.

Norwood Press  
J. S. Cushing Co. — Berwick & Smith Co.  
Norwood, Mass., U.S.A.



## PREFACE

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IN my introductory chapter, written in 1888, I said that it was my purpose to write the history of the United States from the introduction of the Compromise Measures of 1850 down to the inauguration of Grover Cleveland, thirty-five years later. The Compromise of 1850, which Clay thought had settled the slavery question for a generation; the revival of the dispute by the Kansas-Nebraska Act of 1854, so that it was never again stilled until slavery was abolished; the different contributing causes of the Civil War; the Civil War itself with the development of Lincoln and the abolition of slavery; the Reconstruction of the Union based on universal negro suffrage;—all these events have a logical connection and constitute a distinct historic period. The final term in this momentous series seemed to be the return of the Democratic party to power after an interval of twenty-four years. Further reflection has, however, convinced me that a more natural close for this history is the account of the final restoration of home rule in the South soon after the inauguration of Rutherford B. Hayes in 1877. The withdrawal of the United States troops from South Carolina and Louisiana, following upon the tacit consent of the North to the overthrow of the other Southern carpet-bag-negro governments by the educated and property-holding people of the several States, was proof that the Recon-

struction of the South, based on universal negro suffrage, was a failure and that, on the whole, the North was content that the South should work out the negro problem in her own way subject to the three constitutional amendments, which embodied the results of the Civil War; and subject, also, to the public opinion of the enlightened world.

My matured conviction receives additional weight from the fact that the last presidential campaign fought out on the Southern sectional issue was that of 1876. Though the negro problem has remained ever before our eyes, it has no longer dominated all other issues. From 1877 on the public mind has turned to different matters of controversy.

Again, in 1877, the beginnings of a genuine reconciliation between South and North are plainly discernible; a feeling which has steadily grown, subject only to such slight reactions as attend all movements of opinion.

These reasons seem sufficient justification for my change of plan. And another has influenced me. With the subsidence of the Southern issue, other social questions have arisen, the inception of which or the progress of which may be well studied from 1877 on. To write purely a narrative history from 1877 to 1885 or to 1897 would be to shirk a duty and to miss the significance of the period; and, for attacking the social questions involved, I feel as yet a lack of basic knowledge. Nineteen years' almost exclusive devotion to the study of one period of American history has had the tendency to narrow my field of vision. [Before proceeding further, I feel the need of a systematic study of the history of Europe during the eighteenth and nineteenth centuries,

especially the histories of England, France, and Germany, in order to bring to bear the light which the experience of those countries may throw upon our own progress since 1877.]

To the public, especially to the students of history in the universities and colleges and out of them, who have followed my very detailed narrative, I express my hearty thanks. Their words of cheer have been grateful; their criticisms have been carefully considered. For the reviewers of my work in the daily and weekly journals and in the magazines and reviews, I feel little but gratitude. Their commendation has been highly appreciated; their censure has seemed in the main sincere; many of their suggestions have been helpful.

What I have attempted in the way of colour when touching upon South Carolina and Charleston has been completely and artistically done by Owen Wister in "Lady Baltimore." Every student of the South during the period of Reconstruction will have his knowledge clarified and his judgment informed by a study of this delicate portrayal of the people of Charleston. [Through the charm of a skilfully constructed story, he will be made to see the life as it is and as it was. Nothing, in my judgment, has been written to prove so powerful an agent in bringing to pass Lamar's noble words, "My countrymen *know* one another and you will *love* one another."] X

As usual at the end of a volume or other natural division of my work, I have some special acknowledgments to make. Conversations with William Endicott, Francis L. Higginson, Reginald Foster, John T. Morse, Jr., Henry L. Higginson, Moorfield Storey and Henry S.

Pritchett, and correspondence with Dunbar Rowland and Frank Johnston (both of Jackson, Miss.) have assisted me much in the use of my material for the sixth and seventh volumes. I am indebted for aid to Charles K. Bolton, Librarian, and to Miss Wildman and Miss Wall, assistants in the Boston Athenæum, to Herbert Putnam and Worthington C. Ford of the Library of Congress, and to Miss Wyman, my secretary; to my son, Daniel P. Rhodes, for a valuable literary revision. Throughout these pages will be found a number of expressions of obligation to D. M. Matteson. To them I desire to add that his careful revision of my whole manuscript has added greatly to its accuracy and fullness. I owe C. W. Lewis thanks for a number of verbal corrections in my volumes I, II, III, and IV.

BOSTON, May, 1906.

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# HISTORY OF THE UNITED STATES

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## CHAPTER XXX

RECONSTRUCTION of the Union was the urgent and difficult business that followed naturally upon the end of the war. For its successful accomplishment the plan must satisfy the sentiment of the great Union party at the North and must be accepted by the South; and to bridge the chasm between the two a wise constructor and moderator was needed. No man was so well fitted for the work as Lincoln would have been had he lived. Understanding as he had done both peoples and possessing in an eminent degree the necessary qualities of charity and firmness, he had a hold on his party which would have enabled him generally to lead whither he would go; and while the abundance of his mercy could not have been commonly emulated by a people who had just finished a bitter civil war he could have led them part way and when they held back resolutely, he would have given up some of his cherished ideas not because they were not right, but because they were inexpedient. Touching the assembling of the old Virginia legislature he had said to Secretary Welles, "I cannot go forward with everybody opposed to me"<sup>1</sup> and that a similar feeling would have swayed him in his future policy cannot be doubted by any one who has carefully considered his acts as President. He would not have quarrelled with Congress; he would not have appealed from Congress to the country. His influence on both would have been enormous; but when he had exerted that influence by his wonderful power of persuasion and had failed either

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<sup>1</sup> *The Galaxy*, April, 1872, p. 524.

fully to convince the people or to bring round leading senators and representatives to his own opinion, he would have sought an agreement in mutual concessions, starting from ground common to them both and showing his confidence in their patriotism and honest intention. Magnanimity to the South would not have excluded tolerance to his own party, nor would self-confidence born of the successful termination of the war have grown into arrogance or a lack of respect for the opinions of those who did not see with his own eyes. We may feel sure therefore that eventually he and his party would have been at one. Lincoln understood the South and knew the negro. The negroes had a sublime faith in their liberator and would have submitted themselves implicitly to his guidance. The Southern people were beginning to have a respect for his character and would have soon recognized that he was their friend. Hardly a doubt can exist that he would have rendered acceptable to them the conditions which the North deemed it necessary to impose. Under Lincoln reconstruction would have been a model of statecraft which would have added to his great fame.

Of all men in public life it is difficult to conceive of one so ill-fitted for this delicate work as was Andrew Johnson. Born in the midst of degrading influences (at Raleigh, N.C., 1808), brought up in the misery of the poor white class, he had no chance for breeding, none for book education, none for that half-conscious betterment which comes from association with cultivated and morally excellent people. It is said that he never went to school for a day. Apprenticed to a tailor at the age of ten, he had only manual labour to perform, but this was lightened by visits to the shop of a gentleman who read to the workers from "The American Speaker" some speeches of British orators and statesmen, which aroused in Johnson the desire to read that book. With this incentive and the aid of jour-

neymen with whom he worked he mastered the art and was able to enjoy by himself the speeches of Pitt and Fox which possessed for him a special attraction. At sixteen he became a journeyman tailor, at eighteen he moved to Greenville in the eastern part of Tennessee and married an excellent woman who read to him by day as he plied the needle and in the evening taught him to write and cipher. [Johnson was a born politician and speechmaker and at twenty began his political life having been elected alderman as the workingman's candidate in opposition to the aristocracy of his little town which was based on the ownership of slaves.] From this time forward he held office almost constantly as alderman, mayor and member of the legislature until 1843 when he was sent to the national Congress as representative in which capacity he served for ten years. Here his lack of rudimentary education was painfully manifest. The pages of the House were eager to get the autographs of members because of the money they would fetch and this account is given by Stuart Robson the actor who was a page during the Thirtieth and Thirty-first Congresses: "Andrew Johnson was one who was very fond of giving his autograph and it was with some difficulty that he could write it. . . . In signing his name he would put his tongue to one side of his mouth and sway his body with every movement of his pen like an Irishman who is a little in doubt about his ability to make his mark."<sup>1</sup> Yet he was a reader of books and loved to interlard his speeches with poetical quotations and historical and literary references, but his reading was a veneer and he never mastered a book as Lincoln did the Bible and Shakespeare weaving the substance into his mental being. [Unlike most of our self-made men, among whom Lincoln is always notable, he did not enter politics by way of the

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<sup>1</sup> Boston *Herald*, Sept. 1, 1889.

law and missed that most valuable discipline for commerce with men and for administration of affairs. He went directly from the tailor's bench to the mayor's chair and the legislative hall, and indeed worked intermittently at his trade until elected to Congress. This was much to Johnson's credit but it was not a suitable training for a President of the United States.

Elected Governor of Tennessee for two terms he was in 1857 sent to the United States Senate being a remarkable if not the sole exception to the custom in the slave States which debarred men who worked at a trade from such high office. He was a States' rights Democrat and generally acted with his party and section but he was looked down upon by the aristocratic Southern senators either on account of his plebeian extraction or because he boasted that he had laboured with his hands. In this he was unlike Lincoln who never alluded to "the humbleness of his origin."<sup>1</sup> When secession came he attracted the attention of the North by the vigour and courage with which he spoke in the Senate for the Union; and his words of March 2, 1861 that if he were President he would have the Southern leaders arrested and tried for treason, and if convicted, executed, received the hearty approval of men disgusted with the mealy-mouthed Buchanan. When Tennessee joined the Southern Confederacy Johnson did not go with his State but remaining in the United States Senate espoused the Union cause. Appointed military governor of Tennessee in March, 1862 he went to Nashville and entered at once upon his duties which he seems to have discharged with boldness and efficiency. From December 18, 1860 when he first declaimed against secession in the Senate Johnson was very popular at the North but at the South he was execrated.

A man of strict integrity, a fluent and ready speaker,

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<sup>1</sup> This is noted by Lowell in his essay on Lincoln (1864).



he was at the same time extremely egotistical, the self-confidence of the self-made man obtruding itself in most of his utterances. He possessed physical courage; indeed no man could have taken part in the political life of Tennessee in his time unless he were ready to resent insult and defend himself against personal attack. As military governor his courage was put to the supreme test and apparently it never failed. But at some time during his occupancy of this office he began to drink to excess.<sup>1</sup>

His merits were duly estimated and all these disqualifications might have been known to the National Union Convention of June, 1864, which instead of making a careful inquiry into his character and habits nominated him for the vice-presidency in a moment of sentimental enthusiasm. But there were calmer delegates who deemed it unwise to name for a possible President a Southern Democrat instead of a Northern Republican.<sup>2</sup>

Called to the high office by a calamity so appalling a modest man would have maintained a dignified reserve, taken counsel of others and considered soberly his position. But Johnson had an itch for speechmaking; and different delegations which came to Washington and called on him were eager to hear from the new President and incited him to utterance. Seeming to have a certain jealousy of the memory of Lincoln he made a number of egotistical and commonplace harangues which had undoubtedly a certain vogue in the country at large but which were regretted by leading Republican senators

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<sup>1</sup> I have drawn this characterization from *Life of Johnson*, Savage; do. Bacon, Peterson & Bros.; do. James S. Jones; *Speeches*, ed. by Moore; *Life and Speeches*, Foster; article, James Phelan, *Appleton's Cyclopædia American Biography*; McCulloch, *Men and Measures*; conversation with Hannibal Hamlin.

<sup>2</sup> For example, Thaddeus Stevens, *Life* by McCall, p. 244; McClure, *Lincoln and Men of War Times*, p. 260; Simon Cameron, *Life of Hamlin*, Hamlin, p. 463.

and representatives as being unworthy of the place and the time. The manner in which he spoke persistently of the crime of the Southern leaders, the due punishment of which was death, tended to inflame Northern sentiment, already bitter enough in the lamenting of Lincoln's assassination. "Treason must be made odious" and "traitors must be punished and impoverished" was the burden of his tirades,<sup>1</sup> and his private talk was more vindictive and indeed it is said almost bloodthirsty. Radical men like Wade and Chandler, themselves in favour of harsh measures, feared that Johnson might be too rigorous and endeavoured to assuage his animosity.<sup>2</sup> In his wrathful mood he affixed his name to the proclamation charging Davis with complicity in the murder of Lincoln<sup>3</sup> which was too solemn an act and one which might be fraught with too serious consequences to be done so hastily. The charge was based on evidence in the bureau of military justice at the head of which was Joseph Holt whose credulity for a man of legal training was astonishing. The proclamation had probably the approval of Stanton and of Attorney-General Speed but neither was in a frame of mind to give a temperate judgment. Had an able and cool-headed lawyer gone over the evidence he would have pronounced it insufficient for the utterance of so formal and so imposing an accusation. The mischief of it was that it added to the number of Northern people who already believed that Davis ought to be hanged and therefore made more

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<sup>1</sup> April 21, 1865. What Johnson meant by "impoverished" is apparent from his speech at Nashville June 9, 1864 where he added to the same words as those cited in the text, "their great plantations must be seized and divided into small farms and sold to honest industrious men." These speeches are variously printed in McPherson's *History of Reconstruction*, by Moore and by Foster, and in Appleton's *Annual Cyclopædia*, 1865. They were made mainly in April, 1865.

<sup>2</sup> Blaine, *Twenty Years of Congress*, vol. ii. p. 13; *Life of Chandler*, *Detroit Post and Tribune*, p. 284; *Life of Wade*, *Riddle*, p. 328.

<sup>3</sup> The proclamation is dated May 2, *ante*, p. 157; McPherson, p. 7. In this manner I shall refer to McPherson's *History of Reconstruction*.

difficult the adoption of a moderate and magnanimous policy towards the South.<sup>1</sup>

[It is a curious inquiry whether Johnson's long-seated animosity towards Davis had anything to do with his present readiness to impute to him a crime. This animosity according to Mrs. Davis arose from a debate in the House in 1846 when Johnson interpreting some remarks of Davis as invidious to tailors with a possible reference to himself resented the innuendo and speaking with scorn of our "illegitimate, swaggering, bastard, scrub aristocracy" entered on an encomium of tailors and mechanics in general.<sup>2</sup> Davis felt bitterly towards Johnson and, when captured by General Wilson and informed of the proclamation charging him with complicity in the murder of Lincoln declared that "there was one man in the United States who knew that proclamation to be false" and that was Andrew Johnson, "for he at least knew that I preferred Lincoln to himself."<sup>3</sup>

[While Johnson was talking in public at random, he was in private giving the radicals false hopes of negro suffrage which turned up afterwards to plague him.] Chief Justice Chase and Sumner were earnest for the immediate enfranchisement of the freedmen and they had in the country a following of intelligence and high character<sup>4</sup> although numerically small. We have had a glimpse of Sumner's attitude;<sup>5</sup> and Chase two or three days before the assassination had written to the President two carefully prepared letters urging universal suffrage for the negroes at the South.<sup>6</sup> These two zealous men had failed to convert Lincoln and they now endeavoured to persuade Johnson to their views. During the first month of his

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<sup>1</sup> On public sentiment at this time, see remarks of *The Nation*, June 22, 1866, p. 790.

<sup>2</sup> Memoir of J. Davis, Mrs. Davis, vol. i. p. 243; *Globe*, May 29, 1846, p. 885.

<sup>3</sup> Confederate Government, vol. ii. p. 703; see also pp. 683, 684.

<sup>4</sup> See vol. iv. p. 483.

<sup>5</sup> Chap. xxiv. p. 54.

<sup>6</sup> April 11, 12, O. R., vol. xlvii. part iii. p. 427.



administration they had many interviews with him pressing the matter which they had at heart and were always listened to with attention and even sympathy. Sumner's "long conversation with him" on the evening of April 30 was especially important. "My theme," the senator wrote to Bright, "is justice to the colored race. He [Johnson] accepted this idea completely and indeed went so far as to say 'that there is no difference between us.' He deprecates haste; is unwilling that States should be precipitated back; thinks that there must be a period of probation but that meanwhile all loyal people, without distinction of color, must be treated as citizens and must take part in any proceedings for reorganization."<sup>1</sup> To a caucus of radical Republicans held in Washington May 12 Sumner and Wade declared that President Johnson was in favour of negro suffrage.<sup>2</sup>

[Between the first and second months of his administration Johnson made a political somersault; the suddenness of his change from harshness to leniency toward those who had fought against the Union and the first steps he took in reconstruction show how desirable silence had been until he had determined on a line of procedure. He had retained his predecessor's cabinet and his consideration of the reconstruction of North Carolina with them was in official continuity of Lincoln's last cabinet meet-

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<sup>1</sup> Pierce's Sumner, vol. iv. p. 242; see also pp. 241-249. For Chase's impression, see his letter to General Schofield, O. R., vol. xlvii. part iii. p. 427. May 4 Sumner wrote to Charles F. Dunbar then editor of the *Boston Daily Advertiser*: "As I spoke with you in Washington very freely on the opinion of the late President and the probable controversy on colored suffrage I think I ought to let you know how the matter stands now. I have had several conversations with President Johnson on this important question. Suffice it to say that after I had explained to him fully my opinions, he said, 'there is no difference between us.' I regard this point as practically determined. The question remains how this shall be brought about, by what process, modes and machinery. Here I have my own idea clearly; but there can be no controversy with the President on it. I incline to think that this great question will settle itself." For this manuscript letter I am indebted to the late Professor Dunbar.

<sup>2</sup> Julian's Political Recollections, p. 263.

ing. The question of negro suffrage came up May 9, when Stanton submitted a revision of the draft of a plan for a provisional government which had been discussed April 14 by Lincoln and his advisers. This provided that all "loyal citizens" might participate in the election of delegates to the State convention to be called for the adoption of a new State constitution. What is meant by "loyal citizens" was asked by Welles? "Negroes as well as white men" was the reply; and thereupon at Stanton's suggestion there was an expression of opinion by members of the cabinet. Stanton, Dennison (Postmaster-General), and Speed (Attorney-General) declared for negro suffrage to be imposed on the State by Federal authority. McCulloch (Secretary of the Treasury), Welles and Usher (Secretary of the Interior) maintained that this was beyond the power of the Federal government, Welles arguing that before the issue of the Proclamation of Amnesty and Reconstruction of December 8, 1863 President Lincoln and his cabinet had agreed that "the question of suffrage belonged to the States." Johnson expressed no opinion but took the matter into thoughtful and careful consideration.<sup>1</sup>

When what he deemed justice to the negro race was in question Sumner was not troubled by constitutional and legal scruples but Chase furnished the President the law, advising him to have the enrolment in North Carolina made under "the old constitution" which recognized all freemen as voters instead of under the constitution in force at the time of secession which excluded the free negroes.<sup>2</sup> Chase got the impression that Johnson inclined to this mode of procedure which however was opposed by

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<sup>1</sup> Seward was not present. Welles, *The Galaxy*, April, 1872, p. 530 *ante et seq.*; Stanton's testimony, *Impeachment Investigation*, p. 401. See my vol. iv. p. 484.

<sup>2</sup> I think this statement is justified by a reasonable construction of the letters printed, O. R., vol. xlvii. part iii. pp. 427, 462; *Life of Chase*, Schuckers, p. 520. "The old constitution" was apparently in force until 1835.

two generals then in North Carolina and their opinions were available to the President. Sherman wrote to Chase, "To give all loyal negroes the same political status as white voters will revive the war;"<sup>1</sup> and Schofield wrote to Grant affirming "the absolute unfitness of the negroes as a class" for the suffrage. "They can neither read nor write," he continued; "they have no knowledge whatever of law or government; they do not even know the meaning of the freedom that has been given them, and are much astonished when informed that it does not mean that they are to live in idleness and be fed by the Government."<sup>2</sup> From Washington Sherman wrote on May 28 to Schofield: "I have reason to believe Mr. Johnson is not going as far as Mr. Chase in imposing negro votes on the Southern or any States. I never heard a negro ask for that and I think it would be his ruin. . . . I believe the whole idea of giving votes to the negroes is to create just that many votes to be used by others for political uses because I believe the negro don't want to vote now when he is mixed up with the whites in nearly equal proportion, making ship dangerous."<sup>3</sup>

By the last of May Johnson had decided on a policy and on the 29th issued a proclamation of amnesty and another prescribing a mode of reconstruction for North Carolina. In the first, he granted to all who had "participated in the existing rebellion," except certain specifically defined classes, "amnesty and pardon with restoration of all rights of property except as to slaves" on the condition that they should take an oath to support the Constitution of the United States and the Union and to abide by all laws and proclamations with reference to the emancipation of slaves. The most important exceptions to the amnesty were: civil or diplomatic officers of the Confederacy; military officers above the

<sup>1</sup> May 6, O. R., vol. xlvii. part iii. p. 411.

<sup>2</sup> May 10, *ibid.*, p. 462.

<sup>3</sup> *Ibid.*, p. 586.

rank of colonel, naval above the rank of lieutenant; those who left seats in Congress "to aid the rebellion"; all who had been governors of States; and all who owned property worth over twenty thousand dollars. But those excepted persons might make special application to the President for pardon and to them clemency would be "liberally extended."

In the second proclamation the President appointed William W. Holden provisional governor of North Carolina, whose duty it was to devise the proper machinery for choosing a convention. Only those could vote who had exercised that privilege according to the laws of North Carolina in force immediately before May 20, 1861, the date of her secession, and who had taken the oath prescribed by the proclamation of amnesty. Only such persons likewise could be delegates to the convention. But that convention or the legislature thereafter to assemble might determine the qualifications for electors and for office holders — "a power the people of the several States composing the Federal Union have rightfully exercised from the origin of the Government to the present time."<sup>1</sup>

On June 13 a provisional governor for Mississippi was appointed and a like proclamation was issued. Within a month from that time similar action was taken for Georgia, Texas, Alabama, South Carolina and Florida.<sup>2</sup> The so-called "ten-per-cent" governments of Louisiana and Arkansas set up under President Lincoln were formally or tacitly recognized,<sup>3</sup> and that of Tennessee, organized by Johnson as military governor was maintained. Under the auspices of Lincoln a government had also been established for Virginia with its capital

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<sup>1</sup> O. R., ser. ii. vol. viii. p. 578; ser. iii. vol. v. p. 37. These proclamations are also printed by McPherson, p. 9 *et seq.*

<sup>2</sup> McPherson, p. 12.

<sup>3</sup> *Ibid.*, p. 28; Blaine, *Twenty Years of Congress*, vol. ii. p. 79; my vol. iv. p. 484; *ante*, pp. 52, 54, note 3, 134.



at Alexandria: Johnson by proclamation offered to it the aid of the Federal government so far as should be necessary.<sup>1</sup>

Johnson's policy substantially followed Lincoln's, taking into account the changed circumstances from the surrender of the entire armed forces of the Confederacy; but he was not as liberal in his proclamation of amnesty. Like Lincoln he confined the voters to white men and like him he favoured a qualified suffrage for the negroes although in his opinion that was a matter for the States themselves to determine.<sup>2</sup> His proclamation for North Carolina and consequently all the subsequent ones received the approval of every member of the cabinet, Stanton, Dennison and Speed having given way on the question of negro suffrage.<sup>3</sup> In a speech afterwards Stanton said, "After calm and full discussion, my judgment yielded to the adverse arguments resting upon the practical difficulties to be encountered in such a measure and to the President's conviction that to prescribe the rule of suffrage was not within the legitimate scope of his power."<sup>4</sup> Indeed it is difficult to see how he and his radical colleagues could have done otherwise. It was an extraordinary demand to make that the President should by a mere mandatory proclamation confer the franchise on the negroes. Lincoln had been against such action. The only positive pronouncement of Congress on reconstruction was the Wade-Davis bill and that restricted the right of suffrage to the white man.<sup>5</sup> All the States of the North but six<sup>6</sup> denied the negro the vote and one

<sup>1</sup> May 9, McPherson, p. 8; see Nicolay and Hay, vol. ix. chap. xix.

<sup>2</sup> McPherson, pp. 19, 48; Pierce's Sumner, vol. iv. p. 243.

<sup>3</sup> Stanton's testimony, Impeachment Investigation, p. 401; his letter of Dec. 12, 1867, Gorham's Stanton, vol. ii. p. 416; John Sherman's Speech, Feb. 26, 1866, *Globe* app., p. 126; McCulloch, Men and Measures, p. 378.

<sup>4</sup> May 23, 1866, Life of Stanton, Gorham, vol. ii. p. 305.

<sup>5</sup> Vol. iv. p. 485.

<sup>6</sup> All the New England States but Connecticut and New York. James Harlan of Iowa who succeeded Usher as Secretary of the Interior, May 15,

of the six (New York) required a property qualification for him but not for the white. [The great majority of the Union Republican party was at that time opposed to negro suffrage. There was no colour of law, precedent or custom to justify Johnson in taking the course urged upon him by Sumner and Chase; for the suggestion of the Chief Justice that the President should order a provision of one North Carolina constitution set aside and direct proceedings under a different proviso of a previous constitution was irrational and especially remarkable as coming from a man versed in the law.<sup>1</sup>

Since May 29 Johnson's action had been sound,<sup>2</sup> "I had myself," testified Stanton afterwards, "no doubt of the authority of the President to take measures for the organization of the rebel States on the plan proposed during the vacation of Congress and agreed in the plan specified in the proclamation in the case of North Carolina."<sup>3</sup> This is important as showing the distinct approval by the member of the cabinet who best represented the radical Republicans. But after having started the process of reconstruction the President, in my judgment, made a mistake in not convening Congress in extra session at the earliest possible moment in the autumn. It is true Lincoln would not have called Congress together<sup>4</sup> but he stood as the representative of Northern sentiment fully as much as the Senate and the

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and thought that "loyalty and not color ought to be the basis of suffrage" said in a letter to Sumner June 15, after enumerating the "loyal States" which denied the negro the suffrage: "We have three-fourths of the free States excluding colored citizens from the use of the ballot. I need not suggest to you what use could and would be made of this recorded judgment of the people of the free States applied to themselves, when settling the same question for others." Four days later he wrote that when the question of negro suffrage came to be discussed in the country "the opponents of the measure will apply to the majority of the free States the withering irony, 'Physician, heal thyself.'" Sumner Corr., MS., Harvard Library. This correspondence was placed in the library by the heirs of Edward L. Pierce.

<sup>1</sup> *Ante*, p. 524.

<sup>2</sup> *Ante*, p. 525.

<sup>3</sup> May 18, 1867, Impeachment Investigation, p. 401.

<sup>4</sup> *Ante*, p. 137; Pierce's Sumner, vol. iv. p. 239.

House. Johnson represented no considerable or enduring phase of sentiment at the North and had little comprehension of Northern public opinion which Congress now stood for in an eminent degree. The House was elected at the same time as Lincoln and "there is reason to believe," said Sumner, that it is "the best that has sat since the formation of the Constitution"<sup>1</sup> while the Senate in ability, honesty and experience may be fitly compared with any which has assembled in Washington. One requirement of a durable reconstruction was that the North must be satisfied and this was more difficult than it otherwise would have been because of the tendency to hold the South accountable for the assassination of Lincoln. Moreover satisfaction would not be complete unless Congress had a hand in the work and unless the radical Republicans had a chance to be heard. No member of the cabinet however seems to have advised the summoning of Congress and in April Sumner hoped that it would not be done.<sup>2</sup> In truth the administration of Lincoln had accustomed Congress and the people to arbitrary power which was relished by each party or faction if exercised to further its own particular ends. In April Sumner was content to have reconstruction by executive decree as he then felt sure that it would confer the franchise on the negro but in August his opinion was: "Refer the whole question of reconstruction to Congress where it belongs. What right has the President to reorganize States?"<sup>3</sup> The second thought was the rational one. Andrew Johnson succeeded to greater power than any President except his predecessor had ever wielded,<sup>4</sup> but the war was over and the peaceful rule of legislation by Congress with the

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<sup>1</sup> Address Oct. 2, 1866, Works, vol. xi. p. 4.

<sup>2</sup> Pierce's Sumner, vol. iv. p. 239.

<sup>3</sup> Ibid., p. 256. R. H. Dana states forcibly Sumner's attitude, *Life of Dana*, Adams, vol. ii. p. 332.

<sup>4</sup> See a careful article in *The Nation*, June 12, 1866, p. 745.



advice and approval of the executive ought to have been resumed.]

[Different constitutional theories<sup>1</sup> were invoked to confirm whatever policy any party group desired to pursue toward the South but all agreed that some conditions should be imposed on the States which had been "in rebellion" before they should be entitled to the privileges of those which had sustained the Union cause.] As soon as might be consistent with proper deliberation it was desirable to submit those conditions to the South for acceptance for she was in a temper at the close of the war to consider patiently the terms of the victor. "The people," wrote Schofield to Halleck from Raleigh, May 7, "are now in a mood to accept anything in reason and to do what the government desires. . . . I believe the Administration need have no anxiety about the question of slavery or any other important question in this State."<sup>2</sup> It is undeniable that a sentiment prevailed that the North would exact harsh conditions. Before the Confederate Congress finally adjourned it declared in its appeal to the people that in the event of our "absolute surrender," "not only would the property and estates of vanquished 'rebels' be confiscated but they would be divided and distributed among our African bondsmen."<sup>3</sup> While this and similar appeals were intended primarily to fire the Southern people to prolonged resistance they expressed a latent fear which after the surrender made itself manifest under the influence of Johnson's threats to punish and

<sup>1</sup> For an analysis of these see Dunning, *Essays on the Civil War and Reconstruction*, p. 100.

<sup>2</sup> O. R., vol. xlvii. part iii. p. 430. See also his letters to Sherman and Grant, *ibid.*, pp. 405, 463.

<sup>3</sup> *Ante*, p. 81. The Governor of Mississippi said in his inaugural address Nov. 16, 1863: "Humbly submit yourselves to our hated foes, and they will offer you a reconstructed Constitution providing for the confiscation of your property, the immediate emancipation of your slaves, and the elevation of the black race to a position of equality—ay of superiority, that will make them your masters and rulers."—O. R., ser. iv. vol. ii. p. 961.

impoverish "traitors." There was undoubted anxiety too lest some of the Southern leaders should be tried and executed for treason. The time was propitious for a settlement and could the President and Congress have agreed on a fixed plan they might undoubtedly have moved the Southern States to accord to the negroes full civil rights and qualified suffrage in addition to the conditions actually imposed by Johnson. The North Carolina and subsequent proclamations lifted a heavy load from the Southerner. He felt that he was getting off easy. Under the directions men went to work with alacrity to elect delegates to the constitutional conventions; they showed eagerness to get back into the Union.<sup>1</sup>

As soon as his policy was developed the radical Republicans took issue with the President. Wade, like Johnson, rough and plain-spoken, had a genuine respect for him, did not want to give him up and still hoping that he might be brought to the views of the radicals went to Washington in June and entreated him to convene Congress.<sup>2</sup> But on July 29 the Ohio senator wrote to Sumner from his home: "I regret to say that with regard to the policy resolved upon by the President, I have no consolation to impart. . . . The salvation of the country devolves upon Congress and against the Executive."<sup>3</sup> Thaddeus Stevens asked Sumner by letter, "Is there no way to arrest the insane course of the President in reorganization?" and later wrote, "I have twice

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<sup>1</sup> Carl Schurz's report based on three months' sojourn at the South from July 15, 1865, Sen. Ex. Doc. No. 2, 39th Cong. 1st Sess., p. 3; *The Nation*, Nov. 23, 1865, p. 646, conclusions of a correspondent who had travelled largely in the South in 1865 and 1866, April 12, 1866, p. 460; Report of the Joint Committee on Reconstruction, 39th Cong. 1st Sess., p. xviii, Testimony Virginia, p. 107, Arkansas, etc., p. 100; Sumner's address, Oct. 2, 1866, Works, vol. xi. p. 7; J. D. Cox's *Military Reminiscences*, vol. ii. p. 540; Reconstruction in Mississippi, Garner, p. 61.

<sup>2</sup> Welles, *The Galaxy*, May, 1872, p. 667; speech of Voorhees, House, Jan. 9, 1866, *Globe*, p. 151.

<sup>3</sup> Sumner's Works, vol. ix. p. 480.

written him, urging him to stay his hand until Congress meets." <sup>1</sup> Sumner said that the exclusion of the negroes from voting for delegates to the North Carolina convention was "madness"; <sup>2</sup> and his speech as president of the Massachusetts Republican convention in September was called by an opponent a "Declaration of war against the President." <sup>3</sup> From the "rebel States," he declared, was heard "one sullen, defiant voice:—

‘What though the field be lost?  
All is not lost.’”

“As they precipitated themselves out of the Union they now seek to precipitate themselves back.” Anticipating

<sup>1</sup> June 14, Aug. 26, *ibid.*

<sup>2</sup> Letter to Bright, *Pierce's Sumner*, vol. iv. p. 253.

<sup>3</sup> *Ibid.*, p. 257; *Works*, vol. ix. p. 483. Harlan wrote Sumner Aug. 21: “If our friends all over the country denounce him [Johnson] and drive him into the arms of the Copperheads you will not carry your views by a two-third vote in Congress. Executive influence, the Copperheads and lukewarm Union members in such a contest will carry more than a third of the House of Representatives. . . . In my opinion we ought to be very careful not to drive the President over to the enemy.” McCulloch wrote Aug. 22: “Mr. Johnson is intelligent and patriotic. He is no lover of slavery but a hearty and earnest hater of it and the aristocracy which it has produced. . . . He may be making a mistake but it cannot be a *fatal* mistake inasmuch as the correcting power will still be in his own hands or in the hands of Congress. He is pursuing the only course which he feels at liberty to pursue under the Constitution and he feels very confident that it will be attended with the best results. If as his policy is developed it should appear that he has committed an error he will properly acknowledge it and try some other plan. It is after all but an experiment. If it fails it will not be the fault of the President; and he will then be at liberty to pursue a sterner policy and the country will sustain him in it. Rebels and enemies will not be permitted to take possession of the Southern States or to occupy seats in Congress or to form coalitions with the Northern Democracy for the repudiation of the national debt or a restoration of slavery.”—Sumner Corr., MS., Harvard Library. Sumner's speech was made Sept. 14. Five days before Senator Wilson wrote him: “Fessenden . . . tells me that the President is right in sentiment and opinion on all matters pertaining to the negroes except suffrage—on that question he is wrong. But he hopes that time and firmness and prudence on our part will bring him right. . . . We have a President who does not go as far as we do in the right direction but we have him and cannot change him and we had better stand by the administration and endeavor to bring it right.”—*Ibid.*

an alliance with the Democrats at the North to reassert their ancient masterdom their sentiment seemed to be that having lost by "open war" they should "claim our just inheritance of old by covert guile."<sup>1</sup>

But for the most part the Northern people approved the policy of the President, the operation of which was at first promising, and the radical leaders were despondent. "If something is not done," wrote Thaddeus Stevens, "the President will be crowned king before Congress meets;" and again, "The danger is that so much success will reconcile the people to almost everything."<sup>2</sup> Wade wrote: "To me all appears gloomy. The President is pursuing and resolved to pursue a course in regard to reconstruction that can result in nothing but consigning the great Union or Republican party, bound hand and foot to the tender mercies of the rebels we have so lately conquered in the field and their copperhead allies of the North."<sup>3</sup> Sumner more hopeful than others said in a private letter to Bright, "Some of our friends are in great despair; I am not;" but even he was disappointed that the radical members of the cabinet had forsaken "the good cause." "The attorney-general" (Speed), he wrote, "is the best of the Cabinet; but they are all courtiers unhappily, as if they were the counsellors of a king."<sup>4</sup>

Party convention after party convention, Democratic as well as Republican, held during the summer and autumn, indorsed the policy of the President and pledged him their cordial support. There were but two dis-

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<sup>1</sup> Sumner's Works, vol. ix. p. 453.

<sup>2</sup> To Sumner, June 14, Aug. 17, *ibid.*, p. 480.

<sup>3</sup> July 29, Sumner Corr., MS., Harvard Library; see also letter of Chase, Schuckers, p. 524.

<sup>4</sup> Aug. 8, 11, Pierce's Sumner, vol. iv. pp. 250, 255. Mr. Pierce made a careful study of public sentiment during the summer and autumn and has written an excellent and concise account of it amply supported by a wealth of authorities. Letters to Sumner from Harlan, Speed, Welles and McCulloch are in the Sumner Corr., MS., Harvard Library.



cordant notes. The Union convention of Pennsylvania dominated by Stevens and the Republican of Massachusetts by Sumner expressed a certain confidence in Johnson, but condemned virtually his policy.<sup>1</sup> But every one in Massachusetts did not agree with Sumner. Representative Henry L. Dawes sustained the President. Governor Andrew sympathized with the defeated Southerners, opposed the immediate and unqualified enfranchisement of the negro, and, while thinking Johnson precipitate, urged that New England might give him her friendly co-operation.<sup>2</sup> He had also the support of the great war governor of Indiana. Morton made a speech at Richmond (Ind.) in which he said that Johnson was faithfully trying to carry out the policy of amnesty and reconstruction bequeathed to him by Lincoln, and he also combated Sumner's views on negro suffrage.<sup>3</sup> Johnson himself comprehended the radical opposition under the leadership of Sumner and Stevens but felt sure that he had the great mass of Northern people at his back.<sup>4</sup> *The Nation*<sup>5</sup> of September 28 said that the President's policy had "the miraculous property of ap-

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<sup>1</sup> Appleton's Annual Cyclopædia, 1865, pp. 523, 524, 534, 614, 685, 686, 693, 812, 822; *Tribune Almanac* for 1866, p. 43; *The Nation*, Aug. 24, p. 164.

<sup>2</sup> Pierce's Sumner, vol. iv. p. 251; Life of Andrew, Pearson, vol. ii. p. 263 *et seq.* Henry Winter Davis wrote Sumner July 26: "Will Massachusetts tolerate Dawes? His speech is very discouraging." Thaddeus Stevens wrote Aug. 26: "I fear Dawes. Can he be brought right?"—Sumner Corr., MS., Harvard Library.

<sup>3</sup> Life of Morton, Foulke, vol. i. p. 446; Julian's Political Recollections, p. 264.

<sup>4</sup> McCulloch wrote Sumner Aug. 22, "The policy which is now being tried is, as I believe, approved by a large majority of the Union men at the North."—Sumner Corr., MS., Harvard Library.

Early in September, 1865 I had the good fortune to assist as a hearer at a conversation between the President and Mrs. Douglas at the White House. The President in his animation rose to his feet and declaimed as if he were speaking from a platform. The pith of his talk I have stated in the text. I still retain a vivid impression of the confidence which the President manifested that the country would sustain him. See also Johnson's despatch to the provisional governor of Mississippi, McPherson, p. 19.

<sup>5</sup> The weekly journal, the first number of which appeared July 6, 1865.

pearing to satisfy all parts and parties of the country." In truth it seemed for the moment as if another "era of good feeling" had arrived.

The dejected and impoverished South was sensible of the blessings of peace. The raising of the blockade giving her again open ports, the restoration of commercial intercourse with the North, the transmission of the United States mails, the reopening, as far as possible, of the United States courts<sup>1</sup> — these renewals of former bonds of union were infusing fresh hope into this people, who had just seen the fruitless ending of long years of sacrifice. With the benefits, it is true, came the Treasury establishment with collectors of customs and internal revenue<sup>2</sup> but the significance of being taxed to pay for her own subjugation was not at first duly appreciated by the South. The summer and autumn were characterized by political activity; the first step taken under the new order of things was the election of a convention in each State. The general desire to take part in reconstruction is evidenced by the large number of applications for pardon from men in the excepted classes so that they might vote and be eligible for election as delegates.<sup>3</sup> The President granted pardons freely and wisely.

Mississippi's convention was the first to assemble. On August 21 and 22 it declared that slavery should no longer exist in the State and that the secession ordinance of January, 1861 was null and void. The day after the convention met (August 15) the President sent a telegram to the provisional governor urging the delegates to extend the elective franchise to all negroes who could read and write and to all who owned real estate of a value not less than \$250;<sup>4</sup> but they did not see fit to comply with this wise counsel and thereby missed a great opportunity;

<sup>1</sup> McPherson, p. 9 *et seq.*

<sup>2</sup> *Ibid.*, p. 11.

<sup>3</sup> *The Nation*, Aug. 3, p. 130; Blaine, *Twenty Years of Congress*, vol. ii. p. 75.

<sup>4</sup> This property qualification was that of the New York constitution.

they might have set an example which the other States would have followed.<sup>1</sup>

September 13 South Carolina's convention met and in two days by a vote of 107 to 3 repealed her ordinance of secession. All, with the possible exception of two or three delegates, admitted that slavery was dead but considerable difference of opinion existed as to the manner of expressing the fact. This gave rise to an interesting debate and in the end by a vote of 98 to 8 the convention declared that "the slaves in South Carolina having been emancipated by the action of the United States authorities" slavery should never be re-established.<sup>2</sup>

Alabama speedily abolished slavery, declared her ordinance of secession null and void and repudiated all of her war debts.<sup>3</sup>

North Carolina followed. The phraseology used by her convention in regard to her act of secession illustrates the difference of opinion between that community and the original seven Confederate States: "the said supposed ordinance is now and at all times hath been null and void" (October 9). Touching the war debt there existed a decided difference of opinion but the party favourable to its payment was in the ascendant and the

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<sup>1</sup> Sen. Ex. Doc. No. 26, 39th Cong. 1st Sess., pp. 69, 72, 229; McPherson, p. 19; Appleton's Annual Cyclopædia, 1865, p. 579; Reconstruction in Mississippi, Garner, p. 82. There is no record in the journal of the reading of the President's despatch to the convention. The people of the South were averse to negro suffrage even with an educational or property qualification. See, for example, Sen. Ex. Doc. No. 26, 39th Cong. 1st Sess., p. 124; Report of the Joint Committee on Reconstruction, part iii. p. 132. The subject of qualified negro suffrage does not appear to have been brought up in any convention except that of Texas, in February, 1866. The proposal was voted down in committee; this disposition of it prompted a minority report which was not acted upon. Journal, p. 81.

<sup>2</sup> Journal of the South Carolina convention, Sen. Ex. Doc. No. 26, 39th Cong. 1st Sess., p. 120; The South since the War, Sidney Andrews, p. 47; McPherson, p. 22; Appleton's Annual Cyclopædia, 1865, p. 758.

<sup>3</sup> Sen. Ex. Doc. No. 26, p. 105; McPherson, p. 21; Appleton's Annual Cyclopædia, 1865, p. 14.



convention would have adjourned without annulling it had not pressure from Washington been exerted. The President had added one condition<sup>1</sup> to restoration which was stated in his despatch of October 18 to Governor Holden, "Every dollar of the debt created to aid the rebellion against the United States should be repudiated finally and forever." This is the first sentence of a telegram which elaborates the matter and which as a presidential message was read to the convention. The "score of faithful Union men" applauded it and one shouted "Hurrah for Andy Johnson." The convention soon thereafter adjourned, but the next day, the last of its session, after an animated contest, passed an ordinance repudiating the war debts.<sup>2</sup>

Georgia in two minutes unanimously repealed her ordinance of secession and in one minute abolished slavery (October 30, November 4). But a struggle took place over the war debt. It looked as if assumption would carry the day when the provisional governor telegraphed to the President: "We need some aid to repeal the war debt. . . . What should the convention do?" Promptly came the reply, "The people of Georgia should not hesitate one single moment in repudiating every single dollar of debt created for the purpose of aiding the rebellion against the government of the United States." This turned the scale and the convention by a vote of 135 : 117 repudiated the debt (November 8).<sup>3</sup>

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<sup>1</sup> While I have found no positive evidence for injunctions which were conveyed to the conventions by the President, that they must repeal or declare null and void their ordinances of secession and abolish slavery, yet pending the elections for delegates the provisional governors and other leading men from the South visited Washington and had conferences with the President and Secretary Seward: that they then received instructions is almost beyond doubt. At the time of the elections for members of the conventions it seemed to be generally understood that these two things would be done. See Reconstruction in Mississippi, Garner, p. 87, note 4.

<sup>2</sup> Sidney Andrews, p. 132 *et seq.*; Sen. Ex. Doc. No. 26, p. 11; McPherson, p. 18.

<sup>3</sup> "The debt of the State when the war began was \$2,667,750. This had been increased \$18,135,775 during the existence of the war; which sum was

Georgia had not been devoted to Jefferson Davis and was now the foremost of the cotton States in accepting the new order of things: a memorial (October 31) invoking executive clemency for him came from her therefore with especial grace. It was a dignified paper and expressed substantially the feeling of the preponderant majority of the people of the late Confederacy. "We imposed upon Jefferson Davis," it said, "a responsibility which he did not seek. Originally opposed to the sectional policy to which public opinion with irresistible power finally drove him, he became the exponent of our principles and the leader of our cause. . . . If then he is guilty, so are we. . . . Let not the retribution of a mighty nation be visited upon his head while we, who urged him to his destiny, are suffered to escape."<sup>1</sup>

Sidney Andrews who as correspondent of the *Boston Daily Advertiser* and *Chicago Tribune* spent September, October and November in North Carolina, South Carolina and Georgia has given an interesting account of the personnel and the proceedings of the conventions in these three States. The delegates, and the voters who had chosen them, had with rare exceptions sympathized with the Southern cause after the war began whether they had originally been for or against secession; but all had taken the oath of amnesty and intended to abide loyally by the results of the war, which signified to them that chattel slavery and secession were dead beyond resurrection. Many of the delegates were men of ability and experience and the main body, as was the instinct at the South, submitted to their leadership so that the pro-

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rendered null and void by this ordinance, consisting in the currency and bonds of the State issued by her authority and in which a large amount of ante-war securities had been invested." — *Life of Joseph E. Brown, Fielder*, p. 413.

<sup>1</sup> *Journal of the Convention*; Sidney Andrews, p. 237 *et seq.*; Sen. Ex. Doc. No. 26, p. 80; McPherson, p. 20; *Reconstruction of Georgia*, Woolley, p. 1. Florida annulled her secession ordinance, abolished slavery and repudiated the war debt (Oct. 26, Nov. 6). Texas acted similarly but not until 1866. McPherson, pp. 24, 28.

ceedings were orderly and went straight to the mark. Crushed in spirit and ruined in estate they were, nevertheless, trying to make the best of a bad situation. The depression was in marked contrast with the buoyancy of the conventions of 1860 and 1861;<sup>1</sup> and the action they were now taking betokens the tremendous revolution accomplished in less than five years. There was more reason to rejoice at the performance of South Carolina, North Carolina and Georgia (and this was an indication of Southern sentiment generally) than there was to lament at what they had left undone. Who in January, 1861 would have dared to prophesy that before New Year's Day of 1866 these States and their sisters would by their own acts renounce the practical right of secession and abolish slavery? They were eager now to return to the Union, desired representation in Congress, freedom from military rule (which of course still obtained in the old Confederate States) and the right to manage their own local affairs. When the passions of the war should subside and the ante-bellum habits and modes of thought should revive, good ground for hope existed that the Southern States would be loyal to the reconstructed country.

The different conventions ordered elections for the legislature and other State officers and for members of Congress which were duly held.<sup>2</sup> The vote for Governor in Alabama, Mississippi, North Carolina and Georgia was almost exactly one-half that cast for President in 1860.<sup>3</sup> When the legislatures met, the President required of them that they should ratify the Thirteenth Amendment abolishing slavery and this was done speed-

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<sup>1</sup> See vol. iii. pp. 197, 272.

<sup>2</sup> McPherson, p. 18.

<sup>3</sup> 185,520 : 371,287, *Tribune Almanac*, 1866. The proportion with Georgia out is larger. In Georgia there was no contest. Judge Jenkins, who was "everywhere respected and venerated" (Andrews, p. 242), was elected without opposition. Comparison cannot be made in the case of South Carolina, as in that State there was no popular vote for President in 1860.

ily by South Carolina, North Carolina, Alabama and Georgia but Mississippi refused her assent.<sup>1</sup> These four with the four States reconstructed by Lincoln,<sup>2</sup> added to those of the North which had ratified it made twenty-seven the necessary three-fourths: December 18 the Secretary of State issued a proclamation certifying that the Thirteenth Amendment had become "valid as part of the Constitution of the United States";<sup>3</sup> but even on the day before this became organic law slavery had legal existence nowhere except in Kentucky and Delaware.<sup>4</sup>

The refusal of Mississippi to ratify the anti-slavery amendment and her harsh legislation respecting the freedmen<sup>5</sup> were acts calculated to disturb the President.<sup>6</sup> He had previously been disquieted by what had taken place in Georgia and North Carolina. To the general in command at Augusta he telegraphed November 24: "I am free to say that it would be exceedingly impolitic for Mr. A. H. Stephens's name to be used in connection with the senatorial election. If elected he would not be permitted to take his seat, or in other words, he could not take the oath required. . . . He stands charged with treason and no disposition has been made of his case. . . . The information we have here is that all the members elect to Congress from Georgia will not be able to take the oath of office, and a modification of the oath by the present Congress is exceedingly doubtful. . . . There seems in many of the elections

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<sup>1</sup> McPherson, p. 19; Appleton's Annual Cyclopædia, 1865, p. 760; Dunning, p. 82.

<sup>2</sup> Virginia, Tennessee, Arkansas, Louisiana.

<sup>3</sup> Florida ratified it Dec. 28, 1865, and Texas, Feb. 18, 1870. Four additional Northern States ratified it in Dec., 1865, and Jan., 1866, making a total of 33 out of 36 States, the number in the Union Dec. 18, 1865. Kentucky and Delaware did not ratify it and Mississippi afterwards gave an assent with conditions which made her ratification nugatory.

<sup>4</sup> Texas was so certain to abolish slavery that she need not be excepted.

<sup>5</sup> McPherson, p. 29.

<sup>6</sup> See for example his despatch to the Governor of Mississippi, Appleton's Annual Cyclopædia, 1865, p. 585.



something like defiance, which is all out of place at this time.”<sup>1</sup> On November 27 he telegraphed to Governor Holden: “The results of the recent elections in North Carolina have greatly damaged the prospects of the State in the restoration of its governmental relations. Should the action and spirit of the Legislature be in the same direction it will greatly increase the mischief already done and might be fatal.”<sup>2</sup>]

Congress met on December 4. Four men, one in the House and three in the Senate, stood above their fellows as leaders, Thaddeus Stevens of Pennsylvania, Sumner, Lyman Trumbull of Illinois and William Pitt Fessenden of Maine.

Stevens was born in Vermont in 1792 and, although his family was poor, he received a good education at a Vermont academy and at Dartmouth College. At twenty-two he moved to Pennsylvania where he taught school and studied law. He began practice at Gettys-

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<sup>1</sup> O. R., ser. ii. vol. viii. p. 818. By the act of July 2, 1862 every person elected or appointed to office was required to take an oath that he had “never voluntarily borne arms against the United States” or given “aid, countenance or encouragement to persons engaged in armed hostility thereto”; that he had “neither sought nor accepted nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States”; that he had not “yielded a voluntary support to any pretended government, authority, power or constitution within the United States hostile or inimical thereto.” This is the so-called “iron-clad oath.” Jan. 22, 1866 Stephens declined a proposed election to the Senate, but on being pressed wrote a week later that he would not “refuse to serve,” and he was thereupon elected. Johnston and Browne, p. 489.

<sup>2</sup> Life of Johnson, Savage, App., p. 108. Schurz wrote to Sumner, July 3: “I shall write to him [Johnson] once more before I leave [for the South] to convince him that it would be good policy under existing circumstances not to have any elections held in the Southern States previous to the meeting of Congress. This is a point of great importance and it would be well for our friends to make a united effort in that direction. *The Pres’t must be talked to as much as possible*; he must not be left in the hands of his old associations that are more and more gathering around him.” Harlan wrote Nov. 11: “I regret that I have nothing cheering to write. I feel very sad when I see how very easy it would have been to garner all the fruits to which a just and victorious cause was entitled. . . . I do not see a firm foot path through this Slough of Despond.” — Sumner Corr., MS., Harvard Library.

burg, and, being diligent in his profession, became a good lawyer, his necessary devotion to the work of gaining a livelihood preventing his engaging actively in politics until he had reached the age of thirty-seven. At forty-one he was sent to the legislature where his significant work was embodied in a great speech by which he converted the House and the Senate and thereby saved from repeal the free public school system of his commonwealth. A member of the constitutional convention he refused to sign the constitution adopted, because it limited the suffrage to "every white freeman," the word "white" being an insertion and absent from the two older constitutions. He wished to get rich and went into the iron business but the venture was not a success and at fifty he was involved in debt for more than \$200,000, an enormous amount for that day. The pressure of this obligation drove him to a larger field of practice and he moved to Lancaster, the home of James Buchanan who was but one year older than himself. He soon rose to be the acknowledged leader of the Lancaster bar — a bar noted for good lawyers — and his professional income which was large enabled him with good management and with the presumable help of a revival of business, to reduce his debt to an amount easily handled. Though a keen money-maker he often placed his talent and his time at the service of the poor fugitive slave to prevent his rendition to slavery.

In 1849 at the age of fifty-seven he was sent to the national House of Representatives of which Andrew Johnson was then a member. This was the Congress of the Compromise Measures and the Fugitive Slave Law and Stevens opposed every concession to the slave power. He retired from the House in 1853 but appeared there again in December, 1859 retaining his seat until death. Appointed Chairman of the Committee on Ways and Means at the extra session of July 4, 1861 he became,

to use the words of Blaine, "the natural leader who assumed his place by common consent." Though he showed no constructive ability during the war he was nevertheless a ready and emphatic advocate of measures devised by other men. But as we have seen Congress was dwarfed by the executive; and a parliamentary leader, which Stevens was in an eminent degree, had not the same chance to make his power felt as in a time of peace. The relations between Lincoln and Stevens were not cordial; they were amicable because Lincoln would not be on other than good terms with men whose power and influence were necessary for the great cause. Stevens had not a high opinion of Lincoln's ability as he could not comprehend the wisdom of patient and careful methods. Nevertheless he was the right sort of man for leader of the House in a crisis. Of undoubted physical and moral courage his determined and unfaltering devotion was one of the influences which sustained the Northern people during the weary conflict. A member of the National Union Convention of 1864 he was not favourable to the nomination of Johnson saying to A. K. McClure, "Can't you find a candidate for Vice-President in the United States without going down to one of those rebel provinces to pick one up?"

Stevens was a student and liked to read good literature. When possible he carefully prepared his speeches which were a marvel of brevity beside the rather diffuse speeches of the time; he was also a powerful debater speaking on the spur of the moment in words that could not be misconstrued. He was a natural radical and a violent partisan. Endowed with remarkable wit he sometimes used it genially but more frequently in withering sarcasm. Sumner who elaborated much and whose speech was often painfully stuffed up with words paid tribute to these gifts: "Nobody said more in fewer words or gave to language a sharper bite. Speech was with him at times a cat-o'-nine-tails and woe to the



victim on whom the terrible lash descended." Stevens had a profound sympathy with those who suffered, his feeling for the negro coming straight from the heart. He never forgot a kindly act but on the other hand was bitter and vindictive. During the Confederate invasion of 1863 his iron works near Chambersburg were destroyed; and common report had it that this act by which he was again reduced to poverty increased his virulence towards the South.<sup>1</sup> "He had," wrote Blaine, "the reputation of being unscrupulous as to political methods, somewhat careless in personal conduct, somewhat lax in personal morals."

Stevens nearly seventy-four was infirm, "a broken old man" but his spirit was dauntless. Trained on the political battle-ground of Pennsylvania he was pre-eminently a fighter and his whole life seemed to have been a preparation for the next two and a half years for he now stood at the threshold of his great fame.<sup>2</sup>

For the preliminary organization of the House, the clerk obedient to the behest of the Republican caucus, whose policy had been dictated by Stevens, had placed on the roll of members-elect only those chosen by the States which had adhered to the Union, excluding by set purpose the representatives chosen by the States which had been reconstructed under both Lincoln and Johnson. On the first day of the session (December 4) as required by law the clerk read this roll, and, prompted by Stevens, who apparently dominated the whole proceedings, refused to listen to the protest of a member-elect from Tennessee, and declined to entertain motions from two Democrats directing him to put upon the roll the members-elect from the President's own State.

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<sup>1</sup> This is indignantly denied by Sumner.

<sup>2</sup> This characterization is drawn mainly from McCall's Stevens, but I have been helped by Blaine, *Twenty Years of Congress*; McClure, *Lincoln and Men of War Times*; Callender's Stevens. See also the references to him in my vols. i., ii., iii.

Overbearing these objections, smothering all attempts at debate by points of order, by a motion to proceed to the election of speaker and a demand thereon of the previous question, the Republican majority of considerably more than two-thirds, stood firmly at the back of their leader. Schuyler Colfax of Indiana was elected speaker and certain other business necessary to a permanent organization was despatched. Then Stevens offered a resolution that a joint committee of nine from the House and six from the Senate be appointed to inquire into the condition of the former Confederate States, "and report whether they or any of them are entitled to be represented in either House of Congress . . . ; and until such report shall have been made and finally acted upon by Congress, no member shall be received into either House from any of the said so-called Confederate States." Objection was made by a Democrat and Stevens moved a suspension of rules to enable him to introduce the resolution which was carried by the necessary two-thirds whereupon he demanded the previous question. Another Democrat asked a question intimating the propriety of awaiting action until the receipt of the President's message but this suggestion was frowned upon and by a vote of 133:36 the resolution was adopted.<sup>1</sup> In due time (December 12) the Senate considered it and struck out the last clause above cited: this amendment was agreed to by the House. Stevens was appointed chairman of the House committee, Fessenden of the Senate: the senator became chairman of the joint committee.<sup>2</sup>

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<sup>1</sup> *Globe*, p. 3 *et seq.*, p. 26; The Impeachment and Trial of Andrew Johnson, Dewitt, p. 24. The *Tribune Almanac* classifies the House, Unionists, 145, Democrats, 40; the Senate, Unionists, 40, Democrats and Conservatives, 11.

<sup>2</sup> Their associates were: House, Elihu B. Washburne of Illinois; Justin S. Morrill, Vermont; Henry Grider, Kentucky; John A. Bingham, Ohio; Roscoe Conkling, New York; George S. Boutwell, Massachusetts; Henry T. Blow, Missouri; Andrew J. Rogers, New Jersey. Grider and Rogers were

On the second day of the session (December 5) the President's message was heard. \ Written by George Bancroft,<sup>1</sup> Andrew Johnson ought ever afterwards to have made use of that historian's pen and only addressed his countrymen in such carefully prepared letters and messages. The excellent tenor and style of this paper is in striking contrast with the tiresome redundancy and offensive egotism of his speeches. \ It met in a conciliatory way the hostile or critical attitude of a part of Congress; and to Republican members disposed to work with the President it was a cheering indication that they were separated by no chasm. He appeared to say to the senators and representatives: Let us take counsel together. I know the South and the negro; you know the sentiment of the North. \ "I need," he said at the commencement, "the support and confidence of all who are associated with me in the various departments of Government and the support and confidence of the people." Stating calmly his favourite theory that the Southern States had not been out of the Union, but their functions had merely been "suspended" he related that he had sought "gradually and quietly and by almost imperceptible steps to restore the rightful energy of the General Government and of the States." Recounting the steps which he had taken he asked, "Is it not a sure promise of harmony and renewed attachment to the Union that, after all that has happened, the return of the General Government is known only as a beneficence?" In a still further discussion his words are those of a statesman: "Every patriot must wish for a general amnesty at the earliest epoch consistent with public safety.<sup>2</sup> For

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Democrats. Senate, James W. Grimes, Iowa; Ira Harris, New York; Jacob M. Howard, Michigan; George H. Williams, Oregon; Reverdy Johnson, Maryland. Johnson was a Democrat. Joint Committee on Reconstruction Journal.

<sup>1</sup> Dunning's paper, Massachusetts Historical Society, November, 1905.

<sup>2</sup> Later on in his message he seemed to hold in theory to his early presidential speeches. "It is manifest that treason, most flagrant in its character, has been committed. Persons who are charged with its commission should

this great end there is need of a concurrence of all opinions and the spirit of mutual conciliation. All parties in the late terrible conflict must work together in harmony. It is not too much to ask in the name of the whole people that, on the one side, the plan of restoration shall proceed in conformity with a willingness to cast the disorders of the past into oblivion; and that on the other the evidence of sincerity in the future maintenance of the Union shall be put beyond any doubt by the ratification of the proposed amendment to the Constitution which provides for the abolition of slavery forever within the limits of our country." The adoption of this amendment (the Thirteenth) ought in his opinion to entitle the Southern States to representation in the national legislature but this was for the Senate and House each for itself to judge. He advocated leaving the question of suffrage for the negroes to the States and thought that if the freedmen showed "patience and manly virtues" they might after a while obtain a participation in the elective franchise. "When," he continued, "the tumult of emotions that have been raised by the suddenness of the social change shall have subsided it may prove that they will receive the kindest usage from some of those on whom they have heretofore most closely depended. . . . Good faith requires the security of the freedmen in their liberty and their property, their right to labor, and their right to claim the just return of their labor. . . . I know that sincere philanthropy is earnest for the immediate realization of its remotest aims; but time is always an element in reform. It is one of the greatest acts on record to

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have fair and impartial trials in the highest civil tribunals of the country in order that the Constitution and the laws may be fully vindicated; the truth clearly established and affirmed that treason is a crime, that traitors should be punished and the offence made infamous." At this time public sentiment demanded the punishment in person of no one who was in the country but Jefferson Davis, and it is inconceivable that the President and his cabinet purposed to bring any one else to trial for treason.



have brought four million people into freedom. The career of free industry must be fairly opened to them; and then their future prosperity and condition must after all rest mainly on themselves."

The message was very well received by every one except the extreme radicals. "Was ever a message submitted to a more approving Congress?" asked in the Senate, February 27, 1866, Dixon, a Republican supporter of Johnson. "Was there ever a President's message read by a more admiring public?"<sup>1</sup> It is one, said *The Nation*, "which any Democrat as well as any American may well read with pride." The President has seized the points of a great question and stated them "with clearness and breadth"; and although this journal had thought that reconstruction was going "too fast" and that at least a qualified suffrage should be conferred on the negro it now declared that the President's plan was "the brightest example of humanity, self-restraint and sagacity ever witnessed — something to which the history of no other country offers any approach."<sup>2</sup> Johnson had almost atoned for his mistake in not convening Congress in the early autumn. While the difficulty of the two working together was somewhat greater than it would have been three months earlier, a harmonious co-operation was entirely feasible. The President's message was in the spirit of Lincoln's second inaugural and of the words of Burke, "Nobody shall persuade me when a whole people are concerned that acts of lenity are not means of conciliation;"<sup>3</sup> and if his plan had been sanctioned by the Republican majority in Congress it would undoubtedly have worked out pretty well the problem of reconstruction.<sup>4</sup>

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<sup>1</sup> Dewitt, p. 31; *Globe*, p. 1046.

<sup>2</sup> Dec. 14, p. 742; see Pierce's *Sumner*, vol. iv. p. 268.

<sup>3</sup> *Life of Burke*, Morley, p. 85.

<sup>4</sup> John Sherman who acted with the majority in the Senate wrote in his *Recollections*, vol. i. p. 361: "After this long lapse of time I am convinced

Approval of his policy by Congress was however impossible. Republican senators and representatives differed on many points but all, with exceptions insignificant in number, were jealous of the prerogative of their body and were at one in the opinion that a business so important, which did not need the prompt decision of war but lent itself to deliberation, should be managed by the joint action of Congress and the Executive. It was certain that the Senate and House would tack on other conditions; the part of the President should have been by friendly co-operation, by the process of give and take to make them less onerous and less difficult of acceptance by the South. In short in his public acts and private intercourse he had only to conduct himself according to the letter and spirit of his message to be the daysman needed between the North and the South. In December, 1865 the great body of Republicans in Congress would have preferred to work with Johnson if he had agreed with them as to certain guarantees rather than to follow Sumner and Stevens whose dogmatism was as pronounced as the President's.

On November 12 Sumner had by a telegraphic despatch besought the President to suspend for the present his policy. "To my mind," he said, "it abandons the freedmen to the control of their ancient masters and leaves the national debt exposed to repudiation by returning Rebels."<sup>1</sup> In regard to the latter subject he had not deemed it wise to heed the appeal of Secretary McCulloch who had written to him on August 16: "I have been greatly alarmed at the disposition that seems to exist among our radical friends to induce the holders of our securities to take ground against the President's policy by the argument that under it there is danger

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that Mr. Johnson's scheme of reorganization was wise and judicious. It was unfortunate that it had not the sanction of Congress and that events soon brought the President and Congress into hostility."

<sup>1</sup> Pierce's Sumner, vol. iv. p. 267; Works, vol. xi. p. 24.



of a coalition between the recent Rebels of the South and the Democracy of the North for the repudiation of the obligations which have been created in the prosecution of the war. It will not do to make the faith of the nation dependent upon any such issue; and I entreat you as a leader and a creator of public sentiment not to encourage this idea.”<sup>1</sup> Sumner however used this argument in his speech before the Massachusetts convention in September;<sup>2</sup> but the fear of any attempt at such a repudiation was allayed by the action of the House on the second day of the session when a resolution offered by Samuel J. Randall a Democrat affirming the sacredness and inviolability of the public debt and discountenancing any direct or indirect attempt at repudiation, was carried by 162:1: every Democrat who voted except a Kentucky member gave his voice for the resolution.<sup>3</sup>

As soon as Sumner arrived at Washington he spent two and a half hours with the President, and afterwards gave this account of their meeting: “He began the interview warmly and antagonistically; but at the close thanked me for my visit. He does not understand the case. Much that he said was painful from its prejudice, ignorance and perversity.” This day (December 2) their personal relations ceased.<sup>4</sup> Senator Sherman, a moderate Republican, had received a different impression. “I have seen Johnson several times,” he wrote to his brother, November 10. “He seems kind and patient with all his terrible responsibility.”<sup>5</sup>

The President’s policy was before Congress. Sumner and Stevens, who were never deficient in frankness lost no opportunity of presenting theirs. That Congress

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<sup>1</sup> Sumner Corr., MS., Harvard Library.

<sup>2</sup> Works, vol. ix. p. 455.

<sup>3</sup> Eight Unionists are recorded as not voting, and presumably were absent. Eleven Democrats are also put down as not voting; see *The Nation*, Dec. 14, p. 739.

<sup>4</sup> Pierce’s Sumner, vol. iv. pp. 268, 269; Sumner’s Works, vol. xi. p. 20.

<sup>5</sup> Sherman’s Letters, p. 259.

should insist that the late Confederate States accord civil rights and the suffrage to the negroes was the main feature of Sumner's.<sup>1</sup> Stevens proposed: the reduction of those States to territories, no account therefore to be taken of their ratifications of the Thirteenth Amendment, three-fourths of the loyal States being sufficient; a constitutional amendment changing the basis of representation in the House from population to actual voters; measures to confer on the negroes homesteads, to "hedge them around with protective laws," and to give them the suffrage.<sup>2</sup>

On December 19 in response to a request for information two reports were sent by the President to the Senate: one was General Grant's which was thereafter frequently appealed to by the supporters of Johnson and the other was Carl Schurz's, an important document for those who opposed the President's policy. General Grant's tour in the South had been brief; he had spent one day in Raleigh, two days in Charleston and one each in Savannah and Augusta. On the trains and during his stops he had conversed freely with Southern citizens and officers of the United States army who with their commands were stationed in different places for the preservation of order until civil government should be entirely restored. Conclusions based only on such a journey of observation might not be important; but considering that the magnanimous victor of Appomattox had since the end of the war been in a position to acquire abundant information from all sides, that he was a man who would be likely to recognize the importance of the facts which came to him and that he possessed one of those minds which often attain to correct

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<sup>1</sup> Resolutions of Dec. 4, *Globe*, p. 2; speech of Dec. 20, *ibid.*, p. 92.

<sup>2</sup> Speech of Dec. 18, *ibid.*, p. 72. According to his speech at Lancaster, Sept. 6, 40-acre homesteads were to be provided from the confiscation of "the real estate of 70,000 rebels who own above 200 acres each, together with the lands of their several States." — *The Nation*, Sept. 21.

judgments without knowing the how and the why, it is natural that his opinion should then have carried weight and should now be of historic value in helping us to form a due estimate of Southern sentiment and of a judicious policy of reconstruction. "I am satisfied," he wrote, "that the mass of thinking men of the South accept the present situation of affairs in good faith. . . . Slavery and the right of a State to secede, they regard as having been settled forever by the highest tribunal, arms, that man can resort to." Leading men not only accept the decision as final but believe it "a fortunate one for the whole country. . . . The citizens of the Southern States are anxious to return to self-government within the Union as soon as possible; while reconstructing they want and require protection from the Government; they are in earnest in wishing to do what is required by the Government, not humiliating to them as citizens, and if such a course was pointed out they would pursue it in good faith."<sup>1</sup>

Schurz had been sent South by the President, and reaching his first stopping place on July 15 spent three months in South Carolina, Georgia, Alabama, Mississippi and Louisiana. He was a careful observer and his report is a model of method and expression. Though it is a radical document some of his words may from the point of view of our day be well cited as an indorsement of the President's policy. "The generosity and toleration shown by the Government," he wrote ". . . has facilitated the re-establishment of the forms of civil government and led many of those who had been active in the rebellion to take part in the act of bringing back the States to their constitutional relations. . . . There is at present no danger of another insurrection against the authority of the United States on a large scale." But when Schurz discussed "the moral

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<sup>1</sup> *Globe*, p. 78; McPherson, p. 67.

value of these results" he furnished food for the Republicans who believed that more rigorous conditions than those imposed by the President should be exacted from the late Confederate States. "Treason does, under existing circumstances, not appear odious in the South," he wrote. "The people are not impressed with any sense of its criminality. And there is yet among the southern people *an utter absence of national feeling.*" Their submission and loyalty "springs from necessity and calculation." "Although they regret the abolition of slavery they certainly do not intend to re-establish it in its old form. . . . But while accepting the 'abolition of slavery' they think that some species of serfdom, peonage, or other form of compulsory labor is not slavery and may be introduced without a violation of their pledge. Although formally admitting negro testimony they think that negro testimony will be taken practically for what they themselves consider it 'worth.'" For their protection Schurz thought "the extension of the franchise to the colored people" necessary; and as the masses at the South were "strongly opposed to colored suffrage," the only manner in which they could be induced to grant it was to make it "a condition precedent to readmission."<sup>1</sup>

Thus the question was fairly before Congress and the country.<sup>2</sup> The main body of Republican senators and representatives may be looked upon as the jury with Johnson the advocate on one side and Stevens and Sumner on the other. Burke had said, "I do not know the method of drawing up an indictment against a whole people," but Stevens in his plan of reducing the States to conquered provinces<sup>3</sup> and of confiscation of

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<sup>1</sup> This report is printed in Sen. Ex. Doc. No. 2, 39th Cong. 1st Sess., and my citations are from pp. 13, 35, 43, 44.

<sup>2</sup> Blaine gives an interesting abstract of the debate on reconstruction, vol. ii. p. 128 *et seq.*

<sup>3</sup> Dunning calls Stevens's "the conquered province theory," p. 107.



the land of their inhabitants had discovered it. In his vindictive policy however he had no following of importance and he himself in his speech disclaimed speaking for the Republican party.<sup>1</sup> No attempt was made to inaugurate his project of confiscation and the quiet assent of Congress to the proclamation of the Secretary of State implying that three-quarters of the whole number of States were required for the ratification of the Thirteenth Amendment disposed of his plan for reducing the late Confederate States to territories.<sup>2</sup> Sumner had no vindictive feeling towards the South but stood forth as the champion of an inferior race, and impartial suffrage was his cardinal and paramount article of reconstruction. But the majority of his party in Congress was against him and the sentiment of the North was well expressed in the autumn elections when Connecticut, Wisconsin and Minnesota declared specifically against extending the franchise to coloured persons.<sup>3</sup> From all the evidence it is impossible to resist the conclusion that from the assembling of Congress in December, 1865 to the veto of the Freedmen's Bureau Bill on February 19, 1866 the majority of Republican senators and representatives were nearer to the President's view than to that of Sumner or of Stevens.<sup>4</sup>

But the people of the late Confederacy were rendering the President's task of securing the acceptance of his policy by the North doubly difficult. Carl Schurz said in his report that the "generosity and toleration shown by the government" had not been met on the part of the South "with a corresponding generosity to the government's friends."<sup>5</sup> The evidence confirming this is various

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<sup>1</sup> *Globe*, p. 74.

<sup>2</sup> The latter circumstance is pointed out by Blaine, vol. ii. p. 140.

<sup>3</sup> *Tribune Almanac*, 1866, p. 46; *Appleton's Annual Cyclopædia*, 1865. Colorado which was then adopting a State constitution preparatory to admission also voted against negro suffrage.

<sup>4</sup> E. L. Pierce, from his point of view, has arrived at substantially the same conclusion, vol. iv. p. 272.

<sup>5</sup> p. 13.



and abundant.<sup>1</sup> Secretary Welles wrote that, "The extreme men of the South were in some localities as rash, unreasonable and impracticable as the Radicals of the North and for a time gave the administration scarcely less embarrassment."<sup>2</sup> Johnson himself used the word "defiance" in connection with certain happenings in Georgia—the most forward State in accepting the situation.<sup>3</sup> The first feeling of submission to the will of the conqueror had been succeeded by demands for the rights of their States under the Constitution: between the sentiment prevailing in the State legislatures and that which had governed the earlier conventions there was a marked difference.

Between October, 1865 and March, 1866 the several Southern State legislatures passed enactments in respect to the freedmen which seemed to the North a grudging bestowal on them of certain civil rights nearly counterbalanced by the application to them of harsh criminal legislation. In all the States the negroes were given the power to sue and be sued, and to testify in the courts when coloured persons were concerned. The relationship of man and wife and the responsibility for their children were recognized. The privilege of serving on juries or in the militia was not bestowed nor of course the right to vote or to hold office. They were not always subject to the same proceedings and punishment as the whites. For the negro the penalty for the rape of a white woman and for certain other offences was death where on the white man a lesser punishment was imposed. The apprentice, vagrant and contract labour laws bore hardly on numbers of coloured men and in some States tended to a system of peonage. The negroes were virtually forbidden to assemble, their freedom of movement was restricted and by some legislatures they

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<sup>1</sup> See especially Report of Joint Committee of Reconstruction, p. xvi.

<sup>2</sup> *The Galaxy*, May, 1872, p. 671.

<sup>3</sup> *Ante*, p. 541.

were deprived of the means of defence. In short they were not made equal with the whites before the law.<sup>1</sup>

These laws were not passed in a spirit of defiance to the North,<sup>2</sup> but many good people believed they were; and this and other misconstructions of them had a powerful effect on Northern sentiment. The difficulties of the problem were not generally comprehended at the North. Three and a half million persons<sup>3</sup> of one of the most inferior races of mankind had through the agency of their superiors been transformed from slavery to freedom. It was a race the children of which might with favouring circumstances show an intellectual development equal to white children "up to the age of thirteen or fourteen; but then there comes a diminution often a cessation of their mental development. The physical overslaugh the psychical and they turn away from the pursuit of culture."<sup>4</sup> "The infernal laws of slavery," declared Thaddeus Stevens, "have prevented negroes from acquiring an education, understanding the commonest laws of contract or of managing the ordinary business of life."<sup>5</sup> "I met," wrote Sidney Andrews,

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<sup>1</sup> Besides the summary of this legislation in McPherson, pp. 29-44, D. M. Matteson examined for me the laws in the statute-books, and in House Ex. Doc. No. 118, House Report No. 30, 39th Cong. 1st Sess., made an abstract of them and generalized the features. See Reconstruction in Mississippi, Garner, p. 113; Reconstruction of Georgia, Woolley, p. 18; Dunning, p. 92; Woodrow Wilson, Division and Reunion, p. 260; History of the American People, vol. v. p. 18. Blaine's account (p. 93 *et seq.*) is inaccurate and unfair to the South.

<sup>2</sup> This is pointed out by Frederic Bancroft in his doctor's thesis at Columbia College, *The Negro in Politics*, p. 8. His argument is excellent. Only after a large collation of evidence and considerable reflection did I arrive at that conclusion. Judge Emory Speer of Georgia, in a speech to the Independent Club of Buffalo, Dec. 19, 1902, treats this matter judiciously, as indeed he does the whole question of "The Solid South."

<sup>3</sup> For this number, see vol. iii. p. 397. Scientifically, this number should be reduced by the mulattoes, viz. 12 per cent.; see vol. i. p. 340.

<sup>4</sup> Brinton, *Races and Peoples*, p. 192. This I am informed is a pretty general view of ethnologists, although many put the age of arrest earlier.

<sup>5</sup> Speech, Dec. 18, *Globe*, p. 74.

"many negroes whose jargon was so utterly unintelligible that I could scarcely comprehend the ideas they tried to convey." <sup>1</sup>

The negroes' idea of freedom was crude and pitiful. When William Lloyd Garrison was at Charleston, April 15, 1865, he saw at a camp three miles from the city twelve hundred plantation slaves who had been brought thither from the interior by Union soldiers. Their misery and degradation were striking; their manifestations of gratitude affected him deeply and he said, "Well my friends, you are free at last, let us give three cheers for freedom!" and he undertook to lead the cheering. "To his amazement there was no response; the poor creatures looked at him in wonder . . . ; they did not know how to cheer." <sup>2</sup> From a section of the Freedmen's Bureau Act of March 3, 1865 the negroes came to believe that the government purposed to give to each of them "forty acres of land and a mule." <sup>3</sup> The land would be provided from the possessions of their old masters. "When is de land goin' fur to be dewided?" asked a number of country negroes of Andrews. <sup>4</sup> One old negro would not leave with some of his fellows, who, supposing that the blessings of freedom could only be had near the army, were going to Charleston; he gave as his reason, "De home-house might come to me, ye see, sah, in de dewision." <sup>5</sup> The general impression obtained that the distribution of the land would take place at the holidays, between Christmas and New Year's Day. <sup>6</sup> An old negro at Macon said to Andrews,

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<sup>1</sup> The South since the War, p. 227.

<sup>2</sup> Life of Garrison, vol. iv. p. 149.

<sup>3</sup> Blaine, vol. ii. p. 164; J. D. Cox's Military Reminiscences, vol. ii. p. 543. From my own recollections I can testify to this impression.

<sup>4</sup> The South since the War, p. 97.

<sup>5</sup> Ibid., p. 98.

<sup>6</sup> Schurz's report, p. 31; Gen. Wager Swayne's testimony, Arkansas, etc., p. 138; A. H. Stephens's, *ibid.*, p. 160. This Testimony is in House Reports of Committees, Report of Joint Committee on Reconstruction, vol. ii., 39th Cong. 1st Sess., and will be hereafter referred to as Testimony.

"One say dis an' one say dat an' we don' know an' so hol' off till Janerwery."<sup>1</sup>

This expectation of what seemed to them a fortune fostered the native laziness and improvidence of the race; they became unwilling to work and wished to wander about—a life which of necessity was partly supported by theft. To many of the negroes freedom meant simply idleness. Andrews who was opposed to Johnson's policy wrote, "Hundreds of conversations with negroes of every class in at least a dozen towns of central Georgia have convinced me that the race is on a large scale ignorantly sacrificing its own material good for the husks of vagabondage."<sup>2</sup> "What did you leave the old place for, Auntie?" he asked of one who had a comfortable home and had been an indulged favourite of the family. "What fur? 'Joy my freedom!"<sup>3</sup>

Such were the circumstances under which this legislation was enacted. The five and a half million whites who were legislating for three and a half million blacks were under the influence of "the black terror" which was not known and therefore not appreciated at the North. Many of the laws were neither right nor far-sighted but they were natural. The enactments the least liberal as to civil rights and the most rigorous as to punishment of misdemeanours and crimes were those of South Carolina, Mississippi and Louisiana in which States the proportion of negroes to white men was the largest.<sup>4</sup> These States too passed their acts before Christmas. When the "dreaded holidays" had gone by, and the planters' fear of a general insurrection had subsided, when the hopes of the negroes for a parcelling out of the land had come to naught and they had shown a dis-

<sup>1</sup> The South since the War, p. 381.

<sup>2</sup> Ibid., p. 349.

<sup>3</sup> Ibid., p. 353; see Reconstruction of Georgia, Woolley, p. 16.

<sup>4</sup> In South Carolina and Mississippi the negroes outnumbered the whites; in Louisiana they were nearly equal.



position to buckle to work conditions began to improve.<sup>1</sup> And these new developments had undoubtedly some influence in the improvement of the laws concerning the freedmen, which however was mainly due to the circumstance that the States enacting their legislation after January 1, 1866 were the most advanced in accepting the situation and were those where the whites largely outnumbered the blacks.<sup>2</sup>

In my judgment it would have been safe to permit the States to work out this problem under the restrictions naturally arising from the operation of the Freedmen's Bureau and the military occupation which as was conceded by the President and all the Republicans at the North must continue for a while longer. The temper of the officers of the army was for the most part excellent, forbearance and decision being shown as each was needed. "We can't undertake to run State Governments in all these Southern States" said Lincoln during the last cabinet meeting at which he presided. "Their people must do that though I reckon that at first they may do it badly."<sup>3</sup>

The higher classes of the South — the former slaveholders — did not hate the negro. They did not believe that he could rise in the scale of civilization nor did they wish him to rise and they were indignant at the mention of a possible political or social equality. But they had towards him a feeling of kindness and even gratitude for his conduct during the war. Under the guid-

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<sup>1</sup> *The Nation*, Jan. 4, 25, 1866, pp. 3, 97.

<sup>2</sup> Florida excepted.

<sup>3</sup> Account of F. W. Seward, who was present as acting Secretary of State because of his father's disability. *Life of Seward*, vol. iii. p. 275. Henry Ward Beecher said in a sermon October, 1865: "All measures instituted under the act of emancipation for the blacks in order to be permanently useful must have the cordial consent of the wise and good citizens of the South; . . . the kindness of the white man in the South is more important to the negroes than all the policies of the nation put together." — *Life by Lyman Abbott*, p. 278.



ance of certain leaders they would eventually have conferred upon the coloured people full civil rights; justification for this conclusion is found in a study of the course of events in Georgia.

Herschel V. Johnson, as president of the Georgia convention closed its proceedings with a brief speech (November 8) wherein he spoke for his fellow-citizens. "We are," he said, "now to enter upon the experiment whether" our former slaves "can be organized into efficient and trustworthy laborers. That may be done — or I hope it may be done — if we are left to ourselves. If we cannot succeed others need not attempt it."<sup>1</sup> Judge Jenkins — a man of "universally acknowledged probity and uprightness of character," "respected and venerated" everywhere in the State<sup>2</sup> — the newly elected governor, said in his inaugural address (December 14): "Whilst you strong men were in the tented field, far away from unprotected wives and children the negro cultivated their lands, tended their households and rendered all servile observances as when surrounded by the usual controlling agencies. . . . As the governing class individually and collectively we owe them unbounded kindness, thorough protection. . . . Their rights of person and property should be made perfectly secure. . . . The courts must be opened to them."<sup>3</sup> On February 22, 1866 Alexander H. Stephens — whom the Georgians revered<sup>4</sup> — addressed the Georgia legislature at their request. "Ample and full protection," he said, "should be secured to the negroes so that they may stand equal before the law in the possession and enjoyment of all rights of person, liberty and property." Consider "their fidelity in times past. They cultivated your fields, ministered to your personal wants and comforts, nursed and reared your children; and even in the hour of dan-

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<sup>1</sup> Andrews, p. 336.

<sup>2</sup> Appleton's Annual Cyclopædia, 1865, p. 399.

<sup>3</sup> Ibid., pp. 242, 325.

<sup>4</sup> Andrews, p. 358.

ger and peril they were, in the main, true to you and yours. To them we owe a debt of gratitude as well as acts of kindness. . . . They are poor, untutored, uninformed, many of them helpless, liable to be imposed upon. Legislation should ever look to the protection of the weak against the strong.”<sup>1</sup>

These utterances were not meant to cajole the North; they were meant to influence the sentiment of Georgia. Stephens's address was indorsed by the legislature which within less than a month made this enactment: “That persons of color shall have the right to make and enforce contracts, to sue, be sued, to be parties and give evidence, to inherit, to purchase and to have full and equal benefit of all laws and proceedings for the security of person and estate, and shall not be subjected to any other or different punishment, pain or penalty for the commission of any act or offence than such as are prescribed for white persons committing like acts or offences.”<sup>2</sup> On May 26, 1866 Tennessee passed exactly the same law<sup>3</sup> and within the year by gentle pressure from the President and Congress Alabama, North Carolina and Virginia could undoubtedly have been influenced to enact similar legislation after which it would have become general throughout the South.

Had it been possible to leave reconstruction to the officers and soldiers of the Union and Confederate armies, a plan of mercy would have been offered by one side and necessary conditions accepted readily by the other. Grant's view may be easily inferred from his report on the state of affairs at the South; in April, 1866, he said to Alexander H. Stephens, “The true policy should be to make friends of enemies.”<sup>4</sup> General Sherman supported Johnson's policy and was not disturbed at the

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<sup>1</sup> Johnston and Browne, p. 605.

<sup>2</sup> Stephens's Testimony, Arkansas, etc., p. 161; Reconstruction of Georgia, Woolley, p. 20.

<sup>3</sup> McPherson, p. 42.

<sup>4</sup> Johnston and Browne, p. 492.

harsh legislation concerning the freedmen. "Whenever," he wrote, "State legislatures and people oppress the negro they cut their own throats for the negro cannot again be enslaved. Their mistakes will work to the interests of the great Union party."<sup>1</sup> General Thomas said: "The people of Alabama are extremely anxious to be under the Constitution of the United States and to have that State in its regular position in the Union . . . and have attempted to pass laws as judicious as they could at the time to regulate the affairs of the freedmen."<sup>2</sup> "I believe," wrote General Sheridan from New Orleans, "the best thing that Congress or State can do is to legislate as little as possible in reference to the colored man beyond giving him security in his person and property. His social status will be worked out by the logic of the necessity for his labor."<sup>3</sup> We may now add the testimony of General Lee, although when it was given it could not naturally be regarded at the North with the same respect and confidence as now, under the clarifying influence of time's perspective. He affirmed that the people of the South thought that the North could "afford to be generous" and that it was "the best policy."<sup>4</sup> The evidence is ample and comes from various sources that those at the South who submitted with the best grace to the logic of events were the officers and soldiers of the Confederate army.

If the decision had been left to the Southern States themselves qualified negro suffrage even would have been slow in coming although to advanced thinkers the prospect of it was not repugnant. Mallory who had been the Confederate Secretary of the Navy during the whole war wrote to Senator Chandler, "I know many negroes whom I would trust with the ballot and the number

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<sup>1</sup> Feb. 23, 1866, Sherman Letters, p. 264; also *ante*.

<sup>2</sup> Testimony, Jan. 30, 1866, Arkansas, etc., p. 26.

<sup>3</sup> Testimony, March 31, 1866, Florida, etc., p. 123.

<sup>4</sup> Testimony, Feb. 17, 1866, Virginia, etc., p. 132.

will steadily increase and they must at no distant day become voters under certain qualifications.”<sup>1</sup> If it should be plain to the State of Virginia, testified General Lee, that the negroes would vote “properly and understandingly she might admit them to vote.”<sup>2</sup> “Individually,” declared Alexander H. Stephens, “I should not be opposed to a proper system of restricted or limited suffrage” for the negroes.<sup>3</sup> It is a question whether apart from the negroes in the cities and the towns and the mulattoes everywhere, the coloured men had sufficient comprehension of what the suffrage meant to desire it. There was a world of meaning in the remark of a lame barber at Wilmington to Andrews, “To be sure, sah, we wants to vote, but, sah, de great matter is to git into de witness-box.”<sup>4</sup>

What further affected Northern sentiment was the reports of cruelties practised upon the negroes which were due largely if not wholly to the antipathy of the poor whites. In his speech of December 20, 1865 Sumner made a point of this, speaking of “sickening and heartrending outrages where Human Rights are sacrificed and rebel Barbarism receives a new letter of license.”<sup>5</sup> That affairs of the sort occurred as one of the results of the social revolution was undoubted but on the other hand exaggerated accounts of them were readily believed by those who desired to use them as an argument for a severe policy towards the South.

Another element in the case was the aversion of Southern people to those Northerners who wished to settle in the South to engage in agricultural or mercantile pursuits. The guarded statement of General Lee that the late secessionists would prefer not to associate with Northern men, would probably not “admit them

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<sup>1</sup> July 2, 1865, O. R., ser. ii. vol. viii. p. 738.

<sup>2</sup> Testimony, Virginia, etc., p. 134.

<sup>4</sup> The South since the War, p. 189.

<sup>3</sup> Ibid., Arkansas, etc., p. 163

<sup>5</sup> *Globe*, p. 90.



into their social circles" and might even "avoid them"<sup>1</sup> and the outbreak of "a genteelly dressed woman," "I hate the Yankees with my whole heart"<sup>2</sup> were true indications of the sentiment of the community. Most observers agreed that women and preachers were more violent than others in the expression of their hatred.

The manifestations at the South of confidence in the President<sup>3</sup> and the eagerness with which the Democrats in and out of Congress rushed to his support caused Republicans to view his policy with distrust. To their mind a union of "rebels and copperheads" could bode naught that was good but Johnson was disposed at first to rejoice at this Democratic encouragement. George L. Stearns a friend of the coloured people who had furnished part of the money for the John Brown Harper's Ferry raid,<sup>4</sup> told him that reports were industriously circulated in the Democratic clubs that he was going over to the Democrats. The President jauntily replied, "The Democratic party finds its old position untenable and is coming to ours; if it has come up to our position I am glad of it."<sup>5</sup> But later he seemed to fear that such support might be a Grecian gift. "I think," wrote John Sherman, "he feels what every one must have observed that the people will not trust the party or men who during the war sided with the rebels."<sup>6</sup>

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<sup>1</sup> Testimony, Virginia, etc., p. 132.

<sup>2</sup> Andrews, p. 355. During the war and afterwards Yankees was a common appellation for people of the North.

<sup>3</sup> From a mass of evidence I will cite the expressions of three representative men. Wade Hampton wrote, "It is our duty to support the President so long as he manifests a disposition to restore all our rights as a sovereign State." — Andrews, p. 391. General Lee said, "So far as I know the desire of the people of the South, it is for the restoration of their civil government and they look upon the policy of President Johnson as the one which would most clearly and most surely re-establish it." — Testimony, Feb. 17, 1866, p. 131. A. H. Stephens said in his speech of Feb. 22, 1866, "Our surest hopes . . . are in the restoration policy of the President." — Johnston and Browne, p. 601.

<sup>4</sup> See vol. ii. p. 390.

<sup>5</sup> Interview, Oct. 3, 1865, McPherson, p. 48.

<sup>6</sup> Nov. 10, 1865, Sherman Letters, p. 259.



It was not difficult to convince many Republicans that the acceptance of a plan of reconstruction by the South was positive proof that it was too liberal. Herein lay a manifest mistake of the President's: he had made an offer and secured its acceptance before the predominant partner had agreed to it. Some of the wavering who might have followed the President were swayed by the repeated assertions that the secession and the fight against the Union were crimes and must be expiated. The horrors of Andersonville and other prison pens were exaggerated and used as an argument against mercy and the animosity to Jefferson Davis was exploited to turn men from a policy which seemed to imply that he should not be brought to judgment.

To recapitulate: the assertion by Congress of its prerogative, a disposition on the part of the Southern States to claim rights instead of submitting to conditions, harsh laws of the Southern legislatures concerning the freedmen, denial by them of complete civil rights and qualified suffrage to the negroes, outrages upon the coloured people, Southern hatred of Northerners, Southern and Democratic support of the President — all these influences contributed in varying proportions to the decision of Congress not to adopt Johnson's policy but to construct one of their own. Conspicuous in this work were the Senate Committee on the Judiciary and the Joint Committee on Reconstruction.

Lyman Trumbull chairman of the Judiciary Committee had been since 1855 a member of the Senate, owing his first election to the self-sacrifice and political sagacity of Lincoln.<sup>1</sup> Born in Connecticut (1813) his descent on both sides was from prominent New England families but his parents were obviously poor, for after he had completed his studies at the academy, he was denied a college education. At sixteen therefore he began teach-

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<sup>1</sup> See vol. ii. p. 311.

ing school, and at twenty went to Georgia where he continued his school-teaching, began the study of law and in four years was admitted to the bar. At twenty-four he moved to Illinois, practising his profession and taking part in politics as a Democrat in what was then an excellent school for political training. At the bar Lincoln and Douglas and others, who stood higher as mere men of the law, were his compeers and these two leaders gave an intensity and colour to political life. He was sent to the legislature, elected Secretary of State and gaining eminence as a lawyer was chosen one of the judges of the Supreme Court. After five years' service he resigned although his term still had eight years to run; his record had been good and he was always afterwards known as Judge Trumbull. The repeal of the Missouri Compromise drew him again into politics, this time in earnest, as had been the case with Lincoln, and in the autumn of 1854 he was elected to Congress as an anti-Nebraska Democrat, but before he took his seat, he was, as has been related, chosen United States senator.

In the Senate he became naturally a Republican, and in 1856 had a controversy with Douglas on the Kansas question which elicited from Sumner in a letter to a friend this praise: "Trumbull is a hero and more than a match for Douglas. Illinois in sending him does much to make me forget that she sent Douglas. . . . You can hardly appreciate the ready courage and power with which he grappled with his colleague and throttled him. We are all proud of his work."<sup>1</sup> In ante-bellum days he was a friend of Sumner's and in the winter of 1860-1861 the two sympathized in their opposition to the various compromises which were proposed, but during the war they drifted apart. Trumbull did not share Sumner's devotion to the coloured race and they envisaged other questions differently. Sumner desired to express the Thir-

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<sup>1</sup> Pierce's Sumner, vol. iii. p. 433.

teenth Amendment in French-like phrase but Trumbull preferred to stick to the good old language of the Ordinance of 1787, and such was used in the amendment as reported from the Judiciary Committee. The two were at decided variance on the bill providing for a bust of "the late Chief Justice Taney" to be placed in the Supreme Court room. Sumner objected to such a memorial to "the author of the Dred Scott decision" while Trumbull argued: "Suppose he did make a wrong decision. No man is infallible. He was a great and learned and an able man."<sup>1</sup> A little later in the same session their heated debate on the recognition of the Lincoln government of Louisiana<sup>2</sup> left behind a bitterness which for some years prevented cordial relations.

Trumbull was a student of laborious habits, and almost as great a reader as Sumner, although his choice of books was not the same. In recognition of his political standing Yale College in 1858 conferred upon him the degree of Doctor of Laws. He was a great constitutional lawyer. His speech demonstrating the necessity of the Thirteenth Amendment is an example of his cogent reasoning.<sup>3</sup> Chairman of the Judiciary Committee since the Republicans organized the Senate he was a leading senator during the war. He was always a friend and trusted counsellor of Lincoln and the relations between the two drew closer during the last year of Lincoln's life, Trumbull in February, 1865, speaking warmly on the floor of the Senate for the President's reconstruction policy in Louisiana. Next to Fessenden he was the ablest debater in the Senate but it was the matter of his speech not the manner which gave him influence. He knew what he wanted to say and said it clearly, but his manner was nervous and his voice icy and harsh.

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<sup>1</sup> Feb. 23, 1865. For the sequel see Pierce's Sumner, vol. iv. p. 208; Blaine, vol. i. p. 135.

<sup>2</sup> *Ante*, p. 54.

<sup>3</sup> See vol. iv. p. 473 note 2.

A strong man physically as well as mentally, Trumbull was socially reserved and reticent; his private life was spotless. He was an independent political thinker. We have seen that in 1854 principle with him outweighed party. During the war he was one of the few Republican senators who questioned the justice of the arbitrary arrests made by order of the President and he was the only one who advocated the customary mark of respect for the Chief Justice when it applied to the unpopular Taney.<sup>1</sup>

On January 11, 1866 Trumbull reported from the Judiciary Committee his bill to enlarge the powers of the Freedmen's Bureau which had been established by the act of March 3, 1865 approved by President Lincoln.<sup>2</sup> The arguments of Trumbull and Fessenden will enable us to understand best the necessity and scope of this legislation. Trumbull said:<sup>3</sup> "The Freedmen's Bureau is not intended as a permanent institution. It is only designed to aid these helpless, ignorant, unprotected people — the four million made free by the acts of war and the constitutional amendment — until they can provide for and take care of themselves." He argued that the bill was constitutional and combated the claim that the "rebellious States" had now "all the rights they possessed when they began the war." Moreover it was a war measure. "The war powers of the government," he declared, "do not cease with the dispersion of the rebel armies. It is but a short time since the President issued a proclamation restoring the privilege of the writ of habeas corpus in the loyal States<sup>4</sup> but did

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<sup>1</sup> I have drawn this characterization from Biographical Sketches of the Leading Men of Chicago; Nicolay and Hay; Pierce's Sumner; Blaine, Twenty Years of Congress; Arnold's Lincoln; Appleton's Cyclopædia of Biography; *Every Saturday*, March 18, 1871; *The Arena*, March, 1895; Obituary Notice, *New York Tribune*, June 26, 1896; see also my references to Trumbull in vols. ii., iii., iv.

<sup>2</sup> This bill as passed by both Houses is printed in McPherson, p. 72.

<sup>3</sup> Jan. 19, 1866.

<sup>4</sup> Dec. 1, 1865, McPherson, p. 15.



he restore it in the rebellious States? Certainly not. What authority has he to suspend the privilege of that writ anywhere except in pursuance of the constitutional provision allowing the writ to be suspended 'when in cases of rebellion or invasion the public safety may require it?'" Touching a much argued constitutional point he took exactly the same ground as had Lincoln.<sup>1</sup> "I have not attempted to discuss the question whether these States are in the Union or out of the Union, and so much has been said upon that subject that I am almost ready to exclaim with one of old 'I know not whether they are in the body or out of the body; God knoweth.'" Sections seven and eight of the bill were intended to secure civil rights to the freedmen — to give them "equal and exact justice before the law." "If," he said, "the people in the rebellious States can be made to understand that it is the fixed and determined policy of the Government that the colored people shall be protected in their civil rights, they themselves will adopt the necessary measures to protect them; and that will dispense with the Freedmen's Bureau and all other Federal legislation for their protection." He ended his speech with expressions of generous feeling to the South and of the hope that she would conform loyally and unreservedly to the "existing condition of things."<sup>2</sup>

Fessenden argued:<sup>3</sup> "Whether you call it the war power or some other power, the power must necessarily exist, from the nature of the case, somewhere, and if anywhere, in us to provide for what was one of the results of the contests in which we have been engaged. All the world would cry shame upon us if we did not. . . . It becomes necessary in the judgment of the bureau to make some amendments in the law and extend its power. . . . Although in some of its details

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<sup>1</sup> See vol. iv. p. 484; *Ante*, p. 135.

<sup>2</sup> Jan. 23.

<sup>3</sup> *Globe*, p. 319 *et seq.*



I might perhaps wish that we could get along without doing what might seem to be offensive in some States . . . yet I am ready to vote for the bill because it is the result of the best thought that a very able committee<sup>1</sup> has brought to bear upon it."

Having argued the constitutionality and urged the necessity of Trumbull's bill Fessenden deemed it incumbent to say something for the Committee on Reconstruction and for Congress in general. "Able senators on both sides of the House," he said, "have chosen in the course of the debate to talk a great deal about the policy of the President and the policy of Congress." The Democrats are "anxious to get up the idea that there is a collision of opinion between the President and Congress. . . . I have not as yet seen the slightest indication of it. . . . The President has done nothing that his friends complain of and his friends in Congress have done nothing that he can complain of. . . . Before taking a step which is perhaps to affect the welfare of the Government in all future time and in acting upon a question that belongs peculiarly to them the united wisdom of the nation as manifested through its agents in Congress deems it a duty to deliberate quietly, calmly and patiently upon what it is best to do. . . . We do not mean to jump at conclusions; we mean to act as fast as we can safely; but we do not mean to be hurried beyond what our judgment dictates as the necessary time for deliberation and for action. . . . I seek not to impose any conditions" upon the South "that either now or at any future time shall have anything in them of the character of degradation. It cannot possibly be supposed for a moment that the people of the Confederate States feel kindly towards us. I should not at once feel kindly towards any enemy who had conquered me and through whom I had suf-

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<sup>1</sup> The committee on the Judiciary were Trumbull, Harris, Clark, Poland, Stewart and Hendricks.

ferred even if I was wrong. Such is human nature. Time is necessary to soften all animosities. Time is necessary to overcome prejudice. . . . It is therefore to be expected that much will occur, and for a considerable period of time, that will occasion still greater animosity, perhaps, that will indicate a state of feeling that may render a perfect reunion apparently impossible; but I trust in God that the time will come and is not far distant when all the States may be properly represented here." I am "averse to doing anything which by any possibility should be construed into putting a stigma upon any people who are to become members of this community of States. . . . I believe and I know that there is patriotism and magnanimity and love of country at both ends of the avenue."<sup>1</sup>

On January 25 the Freedmen's Bureau Bill passed the Senate by 37:10, all the Republicans<sup>2</sup> present voting in the affirmative, the Democrats in the negative. Dixon of Connecticut, Doolittle of Wisconsin and Norton of Minnesota, Republicans who supported the President's policy, concurred with their party associates; Cowan of Pennsylvania, another administration Republican was absent. On February 6 it passed the House by 136:33, a strict party vote with the exception of a Unionist member from Kentucky who voted against the bill. Henry J. Raymond the editor of the *New York Times*, a party and personal friend of Seward, the Republican champion of the President's policy on the floor of the House, gave his voice for the measure.

The President vetoed the bill sending his message to the Senate on February 19. His objections were: it was unnecessary because the original Freedmen's Bureau Act had not yet expired; it was unconstitutional; it was designed for a state of war which no longer existed; it placed more power than ought to be intrusted to any

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<sup>1</sup> *Globe*, p. 365 et seq.

<sup>2</sup> Otherwise called Unionists.

one man in the hands of the President; it gave the executive an immense patronage; it would entail an enormous expense on the country when "severe retrenchment" should be the rule; and the operation of such an act would coddle the negro to his own detriment. "Another very grave objection" lay in the fact that the bill was passed by a Congress from which eleven States were excluded.<sup>1</sup>

Next day the Senate considered the veto message. Trumbull in a very able speech answered every objection of the President and, in my judgment, demolished his arguments.<sup>2</sup> But he did not prevail upon the Senate. The necessary two-thirds to pass the bill over the veto was not obtained. Cowan, Dixon, Doolittle and Norton voted with the Democrats. Edwin D. Morgan of New York who was a friend of Seward, Van Winkle of West Virginia and Stewart of Nevada who had originally given their voices for the bill, and Willey of West Virginia who had then been absent, all Unionists, now voted to sustain the President, making 18 Nays to 30 Yeas.

On the same day (February 20) the House of Representatives under the leadership of Stevens took part in the quarrel which may be said to have now begun, by adopting a concurrent resolution reported from the Joint Committee on Reconstruction that no senator or representative from the eleven Southern States should be admitted until Congress should have declared such State entitled to representation.<sup>3</sup>

A careful consideration of Johnson's utterances and action may well cause surprise that he did not sign the bill for enlarging the powers of the Freedmen's Bureau.

<sup>1</sup> The veto message is printed in the *Globe*, p. 915; McPherson, p. 68.

<sup>2</sup> *Globe*, p. 936. *The Nation* of March 1 said, "The calmest, most logical and statesmanlike speech of the session was made by Mr. Trumbull in the presence of a crowd boiling with excitement in the gallery."

<sup>3</sup> March 2 the Senate which Dec. 12, 1865 had refused similar action concurred in the resolution.

Every one in the Union party at the North, General Grant<sup>1</sup> and the President included, believed in the absolute necessity for some time of such an institution. Johnson had appointed as its head under the act of March 3, 1865 General Oliver O. Howard,<sup>2</sup> whose knowledge, experience and philanthropy fitted him admirably for the task. "You possess my entire confidence," General Sherman wrote to Howard, "and I cannot imagine that matters that may involve the future of 4,000,000 of souls could be put in more charitable and conscientious hands."<sup>3</sup> Howard's administration was on the whole excellent and he was supported by the President in enforcing "full and ample protection to the freedmen."<sup>4</sup> There were complaints of the under officials by army officers and by Northern and Southern civilians which indicated that there was room for improvement in the personnel of the Bureau; nevertheless experience had demonstrated the advantage of such an institution in the transition state of the South. Trumbull had supposed that his bill harmonized with "the views of the Executive" and the veto caused him "surprise and profound regret";<sup>5</sup> the words of Johnson five days later must have increased the senator's astonishment. He said to General J. D. Cox now governor of Ohio and an intimate friend of Dennison, the Postmaster-General: I am not against the idea of the Bureau in toto; I have used it and am still using it.

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<sup>1</sup> Report, McPherson, p. 86.

<sup>2</sup> O. R., vol. xlvii. part iii. p. 477.

<sup>3</sup> May 17, 1865, *ibid.*, p. 515. In this letter Sherman said: "The demand for his labor and his ability to acquire and work land will enable the negro to work out that amount of freedom and political consequence to which he is or may be entitled by natural right and the acquiescence of his fellow-men (white). But I fear that parties will agitate for the negroes' right of suffrage and equal political status not that he asks it or wants it but merely to manufacture that number of available votes for politicians to work on."

<sup>4</sup> Senator Sherman, Feb. 26, 1866, *Globe*, App., p. 127.

<sup>5</sup> Feb. 20, *Globe*, p. 936; see also Trumbull's speech in August, *The Nation*, Aug. 9, p. 101.



It may continue for a period of more than a year yet. Meanwhile I can say to the South "It depends upon yourselves to say whether the Bureau shall be discontinued at an earlier date for I will put an end to it just as soon as you by proper action for the protection of the freedmen make it unnecessary."<sup>1</sup> No one else was so instrumental in defeating Johnson's own aims as was Johnson himself. He earnestly wished the admission to Congress of the senators and representatives from the Southern States and especially of those from his own State. The veto of the Freedmen's Bureau Bill postponed the restoration of the constitutional relations of Tennessee.<sup>2</sup>

The message which he sent to the Senate with this veto was a dignified paper calculated to win support in the country as well as in Congress. It is unusual for an executive to refuse power and patronage and his act of putting them by must have confirmed the universal belief in his patriotism and good intentions. "He occupied a strong position," said the New York *Evening Post*, "to which the whole country was rapidly rallying."<sup>3</sup> This is too positive a statement of public opinion but the tendency was unmistakable.<sup>4</sup> This move-

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<sup>1</sup> Interview of Feb. 24 attested by the President, New York *Tribune*, Feb. 27. I have changed the third person to first. In his speech against the veto Trumbull repeated what he had said when introducing the bill that the Bureau was not intended as a "permanent institution." The design of it was to protect the negroes "in their new rights, to find employment for the able-bodied and take care of the suffering." Less than 100,000 freedmen were being provided for. If the Southern States he said will extend "the same civil rights to all inhabitants and protect the negro and mulatto just as well as they protect the white man, there is no necessity and no occasion for the operation of the Freedmen's Bureau." — *Globe*, pp. 936, 937, 940, 943.

<sup>2</sup> See proceedings of Joint Committee on Reconstruction, Feb. 20, Journal; Dewitt, p. 50; *Globe*, p. 944; *The Nation*, March 1, p. 264.

<sup>3</sup> Feb. 23.

<sup>4</sup> "Sumner and Stevens would have made another civil war inevitably," wrote General Sherman to his brother from St. Louis, "and as I am a peace man I go for Johnson and the Veto. . . . Sumner has turned all the Union people South as well as of the West against the party." — Feb. 23, Sherman

ment to his support Johnson repelled by a speech which he made on February 22, wantonly abandoning a desirable vantage-ground. McCulloch fearing that the party breach might be widened begged him not to address the citizens who intended to call upon him that day. "Don't be troubled Mr. Secretary," he replied, "I have not thought of making a speech and I shan't make one. If my friends come to see me I shall thank them and that's all."<sup>1</sup>

A mass-meeting, which had approved his veto and general policy adjourned to the White House to congratulate Johnson in person. The large and enthusiastic crowd excited his itch for public speaking; as he went on his combativeness was aroused; he became intemperate and abusive and threw presidential propriety and dignity to the winds in what was called with felicity an "escapade in the shape of a speech."<sup>2</sup> Proceeding in an egotistical manner with the statements and arguments which had become familiar to the country he attacked the Joint Committee on Reconstruction terming it "an irresponsible central directory" that had assumed "all the powers of Congress,"<sup>3</sup> had taken for

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Letters, p. 263. The general had not probably at this time read a full and correct report of the President's speech of the previous day. On the different versions see Boston *Daily Advertiser*, Feb. 23, 24; New York *Tribune*, Feb. 24, 27. Before the veto a friend of Sumner writing to him from Philadelphia gave this accurate account of popular feeling: "There is a very feverish dread in Boston and I find the same here of any breach with the President. It would be a terrible misfortune at this crisis to have a divided North and especially to have the influence of the President thrown into the Democratic party. . . . If we cannot have all we need, we must take what we can get." — Feb. 12, Pierce's Sumner, vol. iv. p. 274.

<sup>1</sup> Men and Measures, p. 393.

<sup>2</sup> *The Nation*, March 1.

<sup>3</sup> Early in its proceedings this committee sent a sub-committee with Fessenden at its head to wait upon the President. They expressed to him the wish of the committee "to avoid all possible collision or misconstruction between the Executive and Congress in regard to the relative positions of Congress and the President and that they thought it exceedingly desirable that, while this subject was under consideration by the joint committee no further action in regard to reconstruction should be taken by the President, unless it should

granted that the Southern States were out of the Union and had refused to let them in when it had been settled by four years of war that "the States had neither the right nor the power to secede." Apparently stimulated by the sympathy of his audience he degenerated into the manner of a stump-speaker of the border. "I am opposed," he vociferated, "to the Davises, the Toombses, the Slidells . . . but when I perceive on the other hand men still opposed to the Union . . . I am still for the preservation of these States. [Cries from the crowd, "Give us the names!"] . . . I look upon as being opposed to the fundamental principles of this Government and as now laboring to destroy them : Thaddeus Stevens of Pennsylvania, Charles Sumner and Wendell Phillips of Massachusetts. [A voice, "Forney!"<sup>1</sup>] I do not waste my fire on dead ducks. . . . I do not intend to be bullied by my enemies. . . . I know my countrymen that it has been said in high places that if such usurpation of power had been exercised two hundred years ago, in particular reigns, it would have cost an individual his head. What usurpation has Andrew Johnson been guilty of? . . . I have occupied many positions in the government going through both branches of the legislature. Some gentleman here behind me says, 'And was a tailor.' Now that don't affect me in the least. When I was a tailor I always made a close fit and was always punctual to my customers and did good work. [A voice, "No patchwork."] No I did not want any patchwork. . . . Cost him his head! Usurpation!

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become imperatively necessary, and that they thought mutual respect would seem to require mutual forbearance on the part of the Executive and of Congress. To which the President replied substantially, that while he considered it desirable that this matter of reconstruction should be advanced as rapidly as might be consistent with the public interest, still he desired to secure harmony of action between Congress and the Executive, and it was not his intention to do more than had been done for the present." — Journal, Jan. 9, 1866.

<sup>1</sup> Secretary of the Senate.

When and where have I been guilty of this? Where is the man in all the positions I have occupied from that of alderman to the Vice-Presidency who can say that Andrew Johnson ever made a pledge that he did not redeem or ever made a promise that he violated or that he acted with falsity to the people!" There have been "innuendoes in high places . . . that the 'presidential obstacle' must be got out of the way, when possibly the intention was to institute assassination. Are those who want to destroy our institutions and change the character of the Government not satisfied with the blood that has been shed? Are they not satisfied with one martyr? Does not the blood of Lincoln appease the vengeance and wrath of the opponents of this Government? . . . Have they not honor and courage enough to effect the removal of the presidential obstacle otherwise than through the hands of the assassin? I am not afraid of assassins."<sup>1</sup>

This speech struck almost the whole North with dismay. Stevens and partisans of his sort may have rejoiced and some Democrats may have gloated over it but all thoughtful men appreciated that the disgrace of the chief magistrate reflected upon the whole country. The bated words, the muffled tone of the press were more significant and impressive than a mass of vituperation. A phase of this detestable affair men talked about in their private intercourse but did not wish to see in print. Nevertheless the President was rebuked for his abuse of Sumner and for imputing to Thaddeus Stevens and to Wendell Phillips a desire for his assassination.<sup>2</sup>

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<sup>1</sup> McPherson, p. 58. The report is that of the *National Intelligencer*. See Blaine, vol. ii. p. 181; Dewitt, p. 50.

<sup>2</sup> New York *Evening Post*, Feb. 23, *Tribune*, Feb. 26, *Nation*, March 1, pp. 257, 262; Boston *Daily Advertiser*, Feb. 24; Sherman's speech, Feb. 26, *Globe*, App., p. 128; Blaine, vol. ii. p. 182; McCulloch, p. 393; Dewitt, p. 53. Contrariwise, New York *Times*, *World*, Feb. 24. One of Sumner's offences was speaking of Johnson's communication of Dec. 18, 1865 as like a "white-washing message of Franklin Pierce," *Globe*, p. 79. But here public senti-



Still the main body of Republicans in Congress were forbearing and stretched forth their hands to the President in the hope of finding common ground of action. An effort to harmonize differences emanating from Ohio had undoubtedly the support of Postmaster-General Dennison, a man of ability and common sense who from the inner councils of the cabinet could well see whither things were tending. Governor J. D. Cox came on to Washington, had an interview with the President (February 24) and wrote a letter giving an account of it which, after having been attested by Johnson, he read to the Ohio members of Congress. Explaining his course in moderate language and a conciliatory tone the President said at the end of his talk: My whole heart is with the body of true men who have carried the country through the war; I earnestly desire to maintain a cordial and perfect understanding with them. This sentiment and purpose I regard as entirely consistent with determined opposition to the obstruction policy of those extremists, who, I believe, will keep the country in chaos until absolute ruin may come upon us. "If you could meet his straightforward, honest look," concluded Governor Cox, "and hear the hearty tone of his voice, as I did, I am well assured you would believe with me that, although he may not receive personal assaults with the equanimity and forbearance Mr. Lincoln used to show, there is no need to fear that Andrew Johnson is not hearty and sincere in his adhesion to the principles upon which he was elected."<sup>1</sup>

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ment had been on the side of the President, Pierce's *Sumner*, vol. iv. p. 272; *New York Nation*, Dec. 28, 1865, p. 806; *New York Tribune*, Feb. 26, 1866. Stevens, Jan. 31, referring to an authorized utterance of Johnson (interview with Dixon, McPherson, p. 51) which he called a command declared that "centuries ago had it been made to Parliament by a British king it would have cost him his head." — *Globe*, p. 536. Wendell Phillips had spoken of the incumbent of the presidential chair as an "obstacle to be removed." *New York Times*, Feb. 24.

<sup>1</sup> *New York Tribune*, Feb. 27. I have changed Johnson's words from third person to first. J. D. Cox wrote me Jan. 16, 1893, "I was intimate

Two days after this interview in a notable speech in the Senate which undoubtedly expressed the views of the moderate Republicans in Congress, John Sherman held out the olive branch to the President. Reciting the several steps in reconstruction, he made a powerful defence of Johnson's action. He had, said the senator, adopted Lincoln's policy and "the main features of the Wade and Davis bill." Up to the recent veto message his plan "met the approval of the Cabinet of Abraham Lincoln. He has executed every law passed by Congress and especially has he executed the Freedman's Bureau Bill" (of March 3, 1865). The principal objection to his policy was that he did not extend his invitation to vote to coloured as well as to white men. But this objection is unreasonable when all the Northern States but six deny the negro the suffrage and since until this session the proposition has not been seriously mooted to confer the suffrage on the coloured men of the District of Columbia where Congress has absolute authority. Although the senator had voted for the Freedmen's Bureau Bill both before and after the veto it was his judgment that including the veto message Johnson had done nothing "inconsistent with the high obligations he owed to the great Union party." But "I do most deeply regret his speech of the 22d of February. I think there is no true friend of Andrew Johnson who would not be willing to wipe out that speech from the pages of history. It is impossible to conceive a more humiliating spectacle than the President of the United States invoking the wild passions of a mob around him with the utterance of such sentiments as he uttered on that day." In conclusion Sherman said: "Now is no time to quarrel with the Chief Magistrate. . . . I will not denounce him for hasty words uttered in repelling

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with Governor Dennison and was myself party to efforts that were made to keep Johnson from entirely breaking with the party."

personal affronts. I see him yet surrounded by the Cabinet of Abraham Lincoln pursuing his policy. No word from me shall drive him into political fellowship with those who, when he was one of the moral heroes of this war denounced him. . . . The association must be self-sought and even then I will part with him in sorrow.”<sup>1</sup>

On the same day (January 11) that he laid before the Senate his measure to enlarge the powers of the Freedmen's Bureau, Trumbull reported from the same committee his Civil Rights Bill, which he regarded as the most important measure proposed for the consideration of the Senate since the Thirteenth Amendment. “That amendment,” he said (January 29), “declared that all persons in the United States should be free. This measure is intended to give effect to that declaration and to secure to all persons practical freedom.” Of what avail, he asked, is the Thirteenth Amendment “if in the late slaveholding States laws are to be enacted and enforced depriving persons of African descent of privileges which are essential to freemen?” The legislatures of the Southern States have by law discriminated against the negroes. “They deny them certain rights and subject them to severe penalties. . . . Although they do not make a man an absolute slave they yet deprive him of the rights of a freeman; and it is perhaps difficult to draw the precise line to say where freedom ceases and slavery begins but a law that does not allow a colored person to go from one county to another, and one that does not allow him to hold property, to teach, to preach, are certainly laws in violation of the rights of a freeman. . . . The purpose of this bill is to destroy all these discriminations and to carry into effect the constitutional amendment;” it

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<sup>1</sup> *Globe*, App., p. 124 *et seq.* For other salient points of the speech see Dewitt, p. 54.

is to give the negro "the right to acquire property, to go and come at pleasure, to enforce rights in the courts, to make contracts, and to inherit and dispose of property." The constitutional warrant for the bill was the second section of the Thirteenth Amendment, "Congress shall have power to enforce this article [abolishing slavery] by appropriate legislation." The machinery for its enforcement was drawn from the Fugitive Slave Law of 1850. "Surely," declared Trumbull, "we have the authority to enact a law as efficient in the interests of freedom as we had in the interests of slavery."<sup>1</sup>

On February 2 the Senate passed the Civil Rights Bill by 33 : 12. Dixon, Morgan and Willey voted for it, Cowan, Norton and Van Winkle and all the Democrats against it. Doolittle was absent. March 13 the House passed it by 111 : 38 :<sup>2</sup> the name of Raymond is in the list of those "not voting."<sup>3</sup>

Here was another chance for Johnson to rehabilitate himself — by approving this bill which had more friends and a more unswerving support than the one to enlarge the powers of the Freedmen's Bureau. In the early part of the session, Trumbull — with "an anxious desire to sustain the President for whom he had always entertained the highest respect" — had had frequent interviews with

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<sup>1</sup> *Globe*, p. 474 *et seq.*

<sup>2</sup> With some amendments, not affecting the main intent of the bill, which were concurred in by the Senate.

<sup>3</sup> The first section of this act which Trumbull said "is the basis of the whole bill" is: "All persons born in the United States and not subject to any foreign Power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall have the same right in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties and to none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding."



him the result of which enforced by his own belief of what was required by the state of the country both North and South, had been this bill (the Civil Rights) as a necessary security for the freedmen. After it was introduced and printed the President was furnished with a copy and, while it was pending in the House and the report ran that he hesitated about signing the Freedmen's Bureau Bill, the hope was expressed to him that if he had objections to any of the provisions of the Civil Rights measure he would make them known to its friends, that if not destructive of the bill, they might be remedied. "He never indicated to me," declared Trumbull, "nor so far as I know to any of its friends, the least objection to any of the provisions of the bill till after its passage. And how could he consistently with himself? The bill was framed, as was supposed, in entire harmony with his views and certainly in harmony with what he was then and has since been doing in protecting freedmen in their civil rights all through the rebellious States."<sup>1</sup>

Was it with the malignant purpose of goading the President to a veto and thus preventing the attempted reconciliation that Stevens made in the House his sarcastic reference to the February 22 speech and had read from a Democratic journal of March 7, 1865, a "disgusting piece of billingsgate" about Vice-President Johnson? His remarks may have been effective in widening the breach, but on account of his obtrusive disrespect to the President they were read by thoughtful men with "smiles that might as well be tears."<sup>2</sup>

"Johnson," wrote John Sherman afterwards in a private letter, "is insincere; he has deceived and misled his best friends. I know he led many to believe he would agree to the Civil Rights Bill."<sup>3</sup> On March 17 he declared in a

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<sup>1</sup> April 4, *Globe*, p. 1760.

<sup>2</sup> March 10, *ibid.*, p. 1308; *The Nation*, March 15, p. 321.

<sup>3</sup> July 8, Sherman Letters, p. 276.

speech at Bridgeport (Conn.), "I believe the President will sign it."<sup>1</sup> But on his return to Washington his confidence abated. "Johnson is suspicious of every one," he said, "and I fear will drift into his old party relations."<sup>2</sup>

Governor Oliver P. Morton on his return from Europe, whither he had gone to be treated for paralysis, hastened to Washington and begged the President to sign the bill, urging that otherwise the rent between him and his party would be beyond mending.<sup>3</sup>

Four members of the cabinet three of whom were lawyers opposed the projected veto.<sup>4</sup> "Stanton reviewed at length the bill section by section, in the cabinet and pronounced it an excellent and safe bill every way from beginning to end."<sup>5</sup>

The President regretfully vetoed the bill, sending to the Senate March 27 a message remarkable for its moderation and careful reasoning.<sup>6</sup> He objected to the measure because it conferred citizenship on the negroes when eleven out of thirty-six States were unrepresented and attempted to fix by Federal law "a perfect equality of the white and black races in every State of the Union." It was an invasion by Federal authority of the rights of the States; it had no warrant in the Constitution and was contrary to all precedents. It was a "stride toward centralization and the concentration of all legislative power in the national government."

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<sup>1</sup> J. Sherman's Recollections, vol. i. p. 369.

<sup>2</sup> March 20, Sherman Letters, p. 269. The exact date has been kindly supplied me by Mrs. Thorndike.

<sup>3</sup> Life of Morton, Foulke, vol. i. p. 466.

<sup>4</sup> Stanton, Harlan, Dennison, Speed; Seward, McCulloch and Welles sustained the President.

<sup>5</sup> Sumner, April 3, Pierce, vol. iv. p. 276; letter of Stanton, Dec. 12, 1867, Gorham's Stanton, vol. ii. p. 420.

<sup>6</sup> McCulloch writes, "It was strong in argument and admirable in spirit. Who assisted him in the preparation of it I do not know; but he must have had assistance, for it exhibited a higher order of legal ability than he possessed." — Men and Measures, p. 406.

It would frustrate the adjustment between capital and the new labour and would tend "to foment discord between the two races."<sup>1</sup>

On April 4 when the Senate considered the veto message, Trumbull answered conclusively every objection of the President and made an irrefragable argument in favour of his bill.<sup>2</sup> Apart from his main contention he made two effective personal points. Andrew Johnson as President objected to the machinery for the enforcement of the Civil Rights Bill but as representative had voted for the same provisions in the Fugitive Slave Law of 1850. Senator Andrew Johnson had lectured President Buchanan on the occasion of the veto of his Homestead Bill in words now eminently applicable to himself: "The President of the United States *presumes* — yes sir I say *presumes* — to dictate to the American people and to the two Houses of Congress in violation of the spirit, if not the letter, of the Constitution that this measure shall not become a law. . . . I ask is there any difference in the spirit of the Constitution whether a measure is sanctioned by a two-thirds vote before its passage or afterward?"<sup>3</sup>

Doubt and excitement attended the vote in the Senate. Could the necessary two-thirds, which had failed the Republicans for the Freedmen's Bureau Bill, be secured? "It is still uncertain," wrote Sumner on April 3 to the Duchess of Argyll, "if we can command this large vote; the division will be very close."<sup>4</sup> Cowan, Dixon, Doolittle, Norton and Van Winkle could be counted on by the President. Solomon Foot (Repub-

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<sup>1</sup> The message is printed in the *Globe*, p. 1679; McPherson, p. 74.

<sup>2</sup> The constitutional aspect is well discussed by Dunning, p. 92.

<sup>3</sup> *Globe*, p. 1760. June 22, 1860 Buchanan vetoed the Homestead Bill, which was Johnson's own measure. The Senate failed to pass it over the veto. "An act to secure Homesteads to actual settlers on the Public Domain" was approved May 20, 1862. The Civil Rights Bill had passed both Houses by more than a two-thirds vote.

<sup>4</sup> Pierce's Sumner, vol. iv. p. 275.

lican) of Vermont, the Father of the Senate who had continually acted with his party lay on his death-bed. Morgan was inclined to be friendly to the administration and Willey was doubtful. With questionable justice and propriety, although Fessenden had favoured the action, the majority on technical grounds had unseated Stockton a Democratic senator from New Jersey who had voted against the bill.<sup>1</sup> Wright his colleague, also a Democrat, was ill at his home. Stewart of Nevada about whom there had been some uncertainty stated on April 5 that he had given his voice originally for the measure and had seen no good reason to change his opinion. Wright had been brought to Washington by his son and could go out in the daytime although to repair to the Capitol in the evening would have been attended with danger. Foot died and the governor of Vermont at once filled the vacancy by the appointment of George F. Edmunds who on April 5 took his seat in the Senate. On the day of the vote (April 6) every senator was present but Dixon who was kept away by illness. During the concluding debate the disaffection of Lane of Kansas to the Republican majority was disclosed, and the result was still in doubt when the President *pro tempore* put the question, "Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?" Lane, it is said, was perplexed up to the last moment but he voted against the bill. When Morgan said aye, the galleries resounded with applause. Suspense still remained until Willey's name was called and recorded on the side of the majority. The requisite number had been obtained. The vote stood 33 : 15, all the Democrats and Cowan, Doolittle, Lane, Norton and Van Winkle giving their voices in the negative. The opponents of the President had no

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<sup>1</sup> Interesting accounts of this action from different points of view are given by Blaine, vol. ii. p. 154, and Dewitt, p. 67.



margin to spare. Had Morgan or Stewart or Willey separated himself from his party or had Stockton not been unseated the veto would have been sustained as Dixon would have been carried into the Senate could his vote have secured that result.<sup>1</sup>

The House, about whose action there was no doubt, passed the bill over the veto (April 9) by 122 : 41 the noes coming from 34 Democrats and 7 Unionists among whom was Raymond.<sup>2</sup> Colfax the speaker, whose vote of aye received applause,<sup>3</sup> announced the result and said : "Two-thirds of the House having upon this reconsideration agreed to the passage of this bill, and it being certified officially that a similar majority of the Senate, in which the bill originated, also agreed to its passage, I do therefore, by the authority of the Constitution of the United States declare that" this Civil Rights Bill "has become a law." On this announcement there ensued from the galleries and the floor of the House hearty and long-continued applause.<sup>4</sup>

The passage of this bill over the President's veto was indeed a momentous event, not only because, in view of Johnson's character, it rendered the breach between him and Congress complete but also for the reason that it opened a new chapter in constitutional practice. Since Washington there had been many vetoes but never until now had Congress passed over the President's veto a measure of importance ; and this measure was one over which feeling in Congress and the country had been wrought up to the highest tension.<sup>5</sup>

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<sup>1</sup> My main authority for this account is the *Globe*, but I have been helped much by Dewitt and Blaine.

<sup>2</sup> The classification of McPherson, p. 81.

<sup>3</sup> It being unusual for the speaker to vote unless the contest was close.

<sup>4</sup> *Globe*, p. 1861.

<sup>5</sup> One unimportant bill was passed over Tyler's veto, five over Pierce's. The case under Tyler has historical importance as being the first action of the kind. Those of Pierce's were vetoes of bills for the improvement of rivers. See *Veto Messages* (1886) ; Dewitt, p. 84 ; Schouler, vol. iv. p. 491 ; vol. v. p. 364.

Johnson's fall from December 5, 1865 when he sent his message to Congress to the April day on which the Senate passed the Civil Rights Bill over his veto was great and may be accounted for by the defects of his character and especially by his lack of political sense. On him the whole history of England and the United States, of government by discussion and compromise was lost. Blaine constructed with considerable ingenuity the theory that Johnson originally adopted his policy largely through the influence of his Secretary of State<sup>1</sup> but here as elsewhere in his interesting but inaccurate history he furnishes no authority for his statements. We may guess that he revived an impression prevailing among senators and members of Congress during the session of 1865-1866;<sup>2</sup> but the biographers of Seward have shown his hypothesis to be highly improbable.<sup>3</sup> Although after the veto of the Civil Rights Bill Sumner wrote privately, "Seward is the marplot"<sup>4</sup> it is not necessary to seek any occult influence determining Johnson to his policy and to his persistence in it. Inheriting it from Lincoln and harking back to the States'-rights doctrine of a Southern Democrat he gave to it a stiff and unyielding character such as would have been impossible for a Northern Whig.<sup>5</sup> While leniency and kindness were attractive to Seward, Johnson was the more positive man of the two and in their counsels the predominance was undoubtedly his rather than Seward's. The documents show that during the summer and autumn the Secretary was in full sympathy with his chief but he never could have counselled Johnson to a course certain

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<sup>1</sup> Vol. ii. p. 63 *et seq.*

<sup>2</sup> Blaine was a representative from Maine.

<sup>3</sup> Lothrop, p. 414; Bancroft, vol. ii. p. 447, note; see also Johnson and Congress, Chadsey, p. 33, note 2.

<sup>4</sup> Pierce, vol. iv. p. 276. See also interview with Seward by Professor Charles Eliot Norton and E. L. Godkin, Bancroft, vol. ii. p. 455, note.

<sup>5</sup> General Grant "thought the plan the child of Johnson's own brain." — Lothrop's Seward, p. 414.

to involve a rupture between him and his party in Congress and the country. Seward was not only not quarrelsome but he was a compromiser; and the opportunities were many for a compromise between the President and Congress.<sup>1</sup> Despite their political differences Sumner remained on cordial, personal terms with Seward and as chairman of the Committee on Foreign Relations saw the Secretary almost daily on public business.<sup>2</sup> His mature explanation "how the President fell" is worthy therefore of more attention than if he had been merely a partisan senator. "Mr. Seward," he declared, "openly confesses that he counselled the present fatal 'policy.' Unquestionably the Blairs, father and son did the same. So also I doubt not did Mr. Preston King."<sup>3</sup> To these influences must be added the flattery of Johnson by Southern men, many of them from the patrician class, which he had formerly reviled, and the wooing of Northern Democrats eager to regain place and power.

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<sup>1</sup> Referring to the late autumn and early winter of 1865, Blaine writes: "It is well known that, to those who were on intimate terms with him, Seward expressed a sorrowful surprise that the South should respond with so ill a grace to the liberal and magnanimous tenders of sympathy and friendship from the National Administration. . . . There are good reasons for believing that he desired some modification of the President's policy. . . . The moderation in language and the general conservatism which distinguished the message [Dec. 5] were perhaps justly attributed to Seward. . . . He now worked most earnestly to bring about an accommodation between the Administration and Congress." — Vol. ii. pp. 107, 115. All this is plausible but it is unsupported by evidence. I have found nothing in Seward's Memoir by his son, in Bancroft or in Lothrop confirming this view. The private correspondence in the Memoir relating to this subject is meagre. During January, 1866, Seward was absent on a voyage to the West Indies. The difference between Seward's and Johnson's attitude is well exhibited by a contrast of their two speeches of Feb. 22. See Seward's Works, vol. v. p. 529.

<sup>2</sup> Pierce, vol. iv. p. 295.

<sup>3</sup> Oct. 2, 1866, Works, vol. xi. p. 19. Regarding the influence of Francis P. and Montgomery Blair and King see Pierce, vol. iv. pp. 230, 250. King had been senator from New York, his term expiring March 4, 1863. Johnson appointed him Collector of the Port of New York City. In November, 1865 he committed suicide; see Blaine, vol. ii. p. 186. He was a friend of Seward; see my vol. iv. p. 204.

"But," as Sumner shrewdly said, "the President himself is his own worst counsellor, as he is his own worst defender."<sup>1</sup> Johnson acted in accordance with his nature. He had intellectual force but it worked in a groove. Obstinate rather than firm it undoubtedly seemed to him that following counsel and making concessions were a display of weakness. At all events from his December message to the veto of the Civil Rights Bill he yielded not a jot to Congress. The moderate senators and representatives (who constituted a majority of the Union party) asked him for only a slight compromise; their action was really an entreaty that he would unite with them to preserve Congress and the country from the policy of the radicals. The two projects which Johnson had most at heart were the speedy admission of the Southern senators and representatives to Congress and the relegation of the question of negro suffrage to the States themselves. Himself shrinking from the imposition on these communities of the franchise for the coloured people, his unyielding disposition in regard to matters involving no vital principle did much to bring it about. His quarrel with Congress prevented the readmission into the Union on generous terms of the members of the late Confederacy; and for the quarrel and its unhappy results Johnson's lack of imagination and his inordinate sensitiveness to political gadflies were largely responsible: it was not a contest in which fundamentals were involved. He sacrificed two important objects to petty considerations. His pride of opinion, his desire to beat, blinded him to the real welfare of the South and of the whole country.

Johnson by implication opposed the doctrine of States' rights to the two bills on which he disagreed with Congress but this argument to be effective involved the assumption that in the winter of 1866 South Carolina

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<sup>1</sup> L. e.



possessed the same rights as Massachusetts, Virginia the same as New York, the mere statement of which was its refutation in the mind of any Republican. His own executive action, his military sway in that part of the country typified the difference in the practical relations of the two sections to the national government. He himself imposed conditions but objected to the imposition by Congress of other conditions, even so reasonable as those contained in the Civil Rights Bill which for example would have no effect in Georgia as that State had enacted substantially the same legislation.<sup>1</sup> In short he insisted on doing things exactly in his own way and no other; he thought that his wisdom was superior to the collective wisdom of Congress; he had brought forward a policy; Congress and the country should swallow it whole. It was dogmatism run mad. But what else could have been expected of a man who on the occasion of being sworn in as President said formally and solemnly: "Toil and the honest advocacy of the great principles of free government have been my lot. The duties have been mine — the consequences are God's."<sup>2</sup>

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<sup>1</sup> *Ante*, p. 561; Senator Stewart, April 5, *Globe*, p. 1785.

<sup>2</sup> In his Cooper Institute speech of Feb. 22 Seward, although making a directly opposite application, illustrated Johnson's attitude toward Congress between December and April by reference to a play, "The Nervous Man and the Man of Nerve." Two men friends for life had arranged a marriage between the son of one and the daughter of the other who, they thought, had never met but who had indeed casually come together and fallen deeply in love. The project was imparted by each parent to each of the children with a great show of mystery. The lady was lovable, the man prepossessing, but they must not meet, the name of the future spouse must not be known until the day of the wedding. In despair at these commands the lovers ran away and were married. Each father knowing naught but that his child had made a clandestine marriage was furious. In the next scene came the pair asking forgiveness: to the parents' surprise the runaway match was exactly the one they had planned. The man of nerve accepted the situation with good humour; the nervous man had another outburst of passion. "Well now old friend," said the first, "have you not got the matter all your own way after all?" "Yes," replied the other, "I have got it all my own way, but I haven't had my own way of having it."—Seward's Works, vol. v. p. 531; Life of Seward, vol. iii. p. 321.

While Trumbull and the Judiciary Committees of the Senate and the House were working on their two important bills the Joint Committee on Reconstruction under the leadership of Fessenden and Stevens were devising a plan. Stevens lacked constructive ability which Fessenden possessed in an eminent degree. In the work of this committee the hand of the Maine senator is as plainly discernible as was that of Trumbull in the legislation which we have just considered.

William Pitt Fessenden was born in New Hampshire in 1806 and at his christening in the Episcopal church Daniel Webster stood godfather. In 1852 at the time of his ardent desire for the Whig presidential nomination, Webster complained that the son of his old friend, for whom he had ridden twenty miles over the snow on a cold winter day to make baptismal vows, voted steadily in the convention for another candidate.<sup>1</sup> Fessenden was precocious as a student and before attaining the age of seventeen was graduated from Bowdoin College. He studied law, was admitted to the bar of Maine and, after trying his fortune in Bridgeton and Bangor, established himself permanently in Portland, where he achieved a high standing in his profession to which he devoted himself with passion. His arguments impressed the judge and yet were perfectly clear to the jury; they were direct and concise, rarely exceeding three-quarters of an hour in length. He argued cases in the United States Supreme Court and had the honour of making an argument which contributed to the reversal of a decision of Justice Story. He served with usefulness many terms in the legislature of his State. In 1837 he had a rare experience. On a political journey to the West Webster desired his company and during their visit to Kentucky presented him to Clay and others as

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<sup>1</sup> Fessenden gave his vote for Scott in compliance with the will of his State in opposition to his personal feeling.

his protégé. The warm and generous hospitality, for which the people of this State were famed, made a lasting impression on him. To Webster he had looked up as his political leader and instructor; he now fell under the charm of Clay and afterwards divided his allegiance between the two great statesmen and rivals. He sat in the House of Representatives for the session beginning December, 1841, and at that time, when his health was robust and his manner always "bright and genial," "he was an especial favorite of Clay and the Kentucky delegation of both Houses," who were gratified at the sympathy between them and the member from the distant Northeast.<sup>1</sup>

His great fame was made in the Senate. Taking his seat on February 23, 1854, he attacked the Kansas-Nebraska Bill only a week later and won a national reputation. "We felt," said Sumner, "that a champion had come." Made chairman of the Finance Committee when the Republicans organized the Senate, he was an efficient support to Chase although he had the wisdom to oppose the legal-tender act. "All that our best generals were in arms," declared Sumner, "he was in the financial field." Master of a clear, incisive style, an adept at putting pregnant matter into few words, possessed of an effective wit and power of sarcasm, he was the ablest debater in the Senate. "As a debater," said Trumbull, "engaged in the current business of legislation the Senate has not had his equal in my time." The story has been told<sup>2</sup> how his sense of duty constrained him to leave this his proper arena to take up the burden of an almost bankrupt Treasury. "At whatever risk of health or reputation," he said in a private letter, "I am compelled to accept. I dare not take the responsibility of declining at such a crisis."<sup>3</sup> After twenty-four days

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<sup>1</sup> Garret Davis.

<sup>2</sup> Vol. iv. p. 480.

<sup>3</sup> Address of Representative Lynch, Memorial Addresses, p. 62.



of office he wrote thus to his warm friend, Senator Grimes :  
“ Things . . . are quite bad enough to appal any but a man desperate as I am. I cannot commit to paper all I would say. If my bodily condition was better, perhaps I might work with more heart and energy ; but I am run down with fatigue, retiring exhausted, and rising little refreshed — a poor state for such work as I have to do. But it must be done and I *will* do it somehow.”<sup>1</sup>

Fessenden was free from vanity. He never courted popularity ; he hated incompetence, shams and demagogism. Of high physical and moral courage he was in 1866 grave, reserved even austere ; his bearing was dignified and aristocratic which often led people to think him cold and proud. Whist, b  zique and novels were his favourite recreations as ill health after 1857 caused him to withdraw almost entirely from general society yet in a small circle of friends the geniality of old came to the top. He was, in the words Senator Williams quoted,

“ Lofty and sour to them that loved him not,  
But to those men that sought him sweet as summer.”

While in the practice of law he was a close student and reader of serious books. In 1858 his own college and in 1864 Harvard conferred upon him the degree of Doctor of Laws.

He was of a high-strung nature, nervous and irascible, and this weakness was increased by an irritating disease. It seemed almost a virtue when he vented his wrath against contractors and placemen who tried to cheat the government ; but in the excitement of debate he sometimes employed his keen satire against his brother senators. A sneer at “ practical business knowledge ” elicited the retort from Chandler, “ The senator from Maine has

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<sup>1</sup> Life of Grimes, p. 265 ; *ante*, p. 234. Fessenden served as Secretary of Treasury from July, 1864, to March, 1865, when he returned again to the Senate, having been elected for a full term.



lectured this body about enough, not only on practical knowledge but about its business and general conduct.”<sup>1</sup> The next day, during the debate on the same subject, he had a bitter personal controversy with Sumner, which with later encounters prevented cordial relations between the two for a number of years.<sup>2</sup> Trumbull once said to his face in the Senate that his “ill temper had left him no friends.”<sup>3</sup> But the eulogies of him by Sumner and Trumbull disclosed that in such a life as his these were but venial slips. “If sparkles fell where they should not have fallen,” said Sumner, “they cannot be remembered now.” We had unpleasant controversies — are the words of Trumbull, but “he was my friend”; he was the senator to whom I oftenest “went for counsel.”

All the eulogists of Fessenden testify to his high character; they have seemed to feel they could never say enough of his honesty and straightforwardness. Gauge him by the exactest standard, by the most lofty ideal of these virtues, either in public or private life, in America or England, and he will not be found wanting.<sup>4</sup>

On January 31 Stevens reported to the House from the committee a proposed constitutional amendment which

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<sup>1</sup> April 26, 1864, *Globe*, p. 1873.

<sup>2</sup> *Ibid.*, p. 1896; Pierce's Sumner, vol. iv. p. 190.

<sup>3</sup> Lincoln's statement; see my vol. iv. p. 481. These exact words are not printed in the *Globe* but their sense is substantially indicated in the report of the acrimonious colloquy between Fessenden and Trumbull, June 18, 1864, p. 3076.

<sup>4</sup> I have drawn this characterization from the article of George H. Preble in the New England Historical and Genealogical Register, April, 1871, p. 108; the Memorial Addresses in the Senate and House, Dec. 14, 1869; Pierce's Sumner; Blaine's Twenty Years of Congress; Appleton's Cyclopædia of Biography; *The Nation*, Sept. 9, 16, 1869; my references in vols. ii. and iv. The case referred to in the Supreme Court was *Veazie vs. Williams*, 8 Howard 134, a reversal of Justice Story's decision in the Circuit Court of Maine. Webster was associated with Fessenden. Blaine terms Fessenden, “one of the ablest lawyers, if not indeed the very ablest that has sat in the Senate since Mr. Webster.” — Vol. ii. p. 379.

"provided, That whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation." This passed the House by 120:46 which was more than the necessary two-thirds.

It was defeated in the Senate (March 9), the vote standing 25:22 which was considerably short of the requirement. Sumner made one speech of four hours against it and spoke twice afterwards, the gist of his objection being that the amendment was unjust to the negroes who ought to be given the ballot, impartially with the whites for their protection. His opposition which was instrumental in defeating it nettled Fessenden who had charge of the measure and he vented upon Sumner the full power of his sarcasm, holding him up to ridicule by fastening upon his turgid rhetoric; but Sumner replied courteously and with good temper.<sup>1</sup> The noes were nine Democrats, six Johnson Republicans, two moderates (Stewart and Willey) and five radicals. Sumner fell under the objurgation of his brother radical, Stevens, who declared that the amendment "was slaughtered by a puerile and pedantic criticism, by a perversion of philological definition" and the "united forces of self-righteous Republicans and unrighteous Copperheads."<sup>2</sup> These divisions among his opponents afforded the President a rare opportunity which would have been promptly seized by one gifted with political sense and willing to concede a little for the sake of gaining much.

On May 10 the House adopted by 128:37 a joint resolution proposing an amendment to the Constitution which had been reported by Stevens from the Joint Committee

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<sup>1</sup> *Globe*, p. 1278 *ante et seq.*; Pierce's Sumner, vol. iv. p. 278.

<sup>2</sup> *Globe*, p. 2459. Grimes wrote May 8: "It is the usual wrangle and jangle in Congress. Thaddeus Stevens attacked Summer to-day."—Life of Grimes, Salter, p. 292.

on Reconstruction and which was the nucleus of the Fourteenth Amendment. Raymond's response of "Aye" was greeted with applause on the floor and in the galleries.<sup>1</sup> The eighteen votes more than the required two-thirds, the six more "yeas" and four less "nays" than the Civil Rights Bill had received indicated that Congress was gaining ground in its conflict with the President.<sup>2</sup>

In the Senate this measure underwent modification. The most important change was the striking out by a unanimous vote<sup>3</sup> of the section which disfranchised "all persons who voluntarily adhered to the late insurrection until July 4, 1870" — against which the formidable opposition in the House had been unable to declare itself owing to the arbitrary leadership of Stevens and the operation of the previous question<sup>4</sup> — and the substitution therefor by 42:1 of a section which omitted disfranchisement but rendered a large class of men ineligible to office.<sup>5</sup> The constitutional amendment, which is the Fourteenth, then passed the Senate (June 8) by a vote of 33:11, the nays being four Johnson Republicans and seven Democrats.<sup>6</sup> Sumner and three other radicals<sup>7</sup> who had in March voted against a measure similar<sup>8</sup> to the section of this amendment which provided a basis of representation now gave their voices with the party majority. The House adopted the Senate amendment (June 13), by a vote of 120:32, all the yeas were Republicans including Raymond, all the nays Democrats.<sup>9</sup> Congress had enacted the Fourteenth Amendment: its ratification by three-

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<sup>1</sup> *Globe*, p. 2545.

<sup>2</sup> See *The Nation*, May 15, p. 610.

<sup>3</sup> *Globe*, May 29, p. 2869.

<sup>4</sup> *Ibid.*, pp. 2542-2545; *The Nation*, *l. c.*; Dewitt, p. 94.

<sup>5</sup> June 8, *Globe*, p. 3042. This is sec. 3 as printed *post*.

<sup>6</sup> *Ibid.*

<sup>7</sup> Brown was absent.

<sup>8</sup> But see the distinction drawn by Storey, *Life of Sumner*, p. 317.

<sup>9</sup> Not voting, 32. There were many pairs, *Globe*, p. 3149; McPherson, p. 102.

fourths of the legislatures of the several States would make it part of the Constitution.<sup>1</sup>

The action of Congress in regard to Tennessee evidenced the terms on which members of the late Confederacy might be admitted to the rights and privileges of States of the Union. Whereas the joint resolution of Congress specified, the people of Tennessee "by a large popular vote" have ratified a constitution abolishing slavery and have declared the ordinance of secession

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<sup>1</sup> The following is the Fourteenth Amendment: "SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

"SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

"SEC. 3. No person shall be a Senator, or Representative in Congress, or elector of President and Vice-President or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

"SEC. 4. The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims, shall be held illegal and void.

"SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."



and war debt void; and whereas their State government has ratified the Thirteenth and Fourteenth Amendments "and has done other acts proclaiming and denoting loyalty"<sup>1</sup> therefore "be it resolved . . . that the State of Tennessee is hereby restored to her former practical relations to the Union and is again entitled to be represented by senators and representatives in Congress." On July 24 the President approved the joint resolution protesting against some of the statements in the preamble.<sup>2</sup> Before Congress adjourned the House admitted eight representatives from Tennessee and the Senate her two senators, all taking the prescribed oath of office.<sup>3</sup>

On July 16 the House and the Senate passed over the veto of the President a Freedmen's Bureau Bill limiting the time of its operation to two years; it was also free from certain other objectionable provisions of the first measure which had been vetoed by the President.<sup>4</sup>

Congress had thus devised a plan of reconstruction. The continuance of the Freedmen's Bureau was a work

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<sup>1</sup> Among these, were the limiting the franchise to those "publicly known to have entertained unconditional Union sentiments from the outbreak of the rebellion until the present time." Reconstruction Tennessee, p. 30, House Reports of Committees, vol. ii., 39th Cong. 1st Sess., and the conferring of civil rights on the negroes, *ante*; McPherson, p. 42. The franchise was limited to white men. Attempts in the House and the Senate to impose the condition of "equal suffrage" failed. Pierce's Sumner, vol. iv. p. 286.

<sup>2</sup> *Globe*, p. 4102.

<sup>3</sup> According to Dewitt four Representatives were Johnson Republicans, four radical. Fowler, one senator, was radical. Patterson, the other, was a son-in-law and supporter of Johnson, p. 103.

<sup>4</sup> See *The Nation*, Aug. 2, p. 90. I have not spoken of the abortive efforts of Congress. The two-thirds majority in the Senate was precarious. Largely to re-enforce the dominant party, bills for the admission of Colorado and Nebraska were passed. The first was vetoed by the President and as it was patent it could not be passed over the veto it was not taken from the table of the Senate. The Nebraska Bill was not signed by the President and the adjournment of Congress prevented its becoming a law. Dewitt, pp. 89, 105; Blaine, vol. ii. p. 276; Pierce's Sumner, vol. iv. pp. 284-288; Life of Grimes, Salter, p. 284. A bill extending the suffrage to the negroes in the District of Columbia passed the House but did not come to a vote in the Senate. It was feared that it could not be passed over a veto. *The Nation*, Aug. 2, p. 90; Pierce's Sumner, vol. iv. p. 284; Dewitt, p. 43.

of charity, the Civil Rights Act secured the equality of the negroes before the law, the Fourteenth Amendment combined reasonableness with justice — altogether they are a system of constructive legislation which may justly command the admiration of congressional and parliamentary historians. The process by which this was brought about is a mark of the best legislative achievement. The lawyers of the Senate and the House with Trumbull at their head worked out the Freedmen's Bureau and the Civil Rights laws. To the Unionists on the Joint Committee on Reconstruction with Fessenden as their chief was due the inception which led step by step to the final perfection of the constitutional amendment. Those men comprehended the country's needs and possessed a far-sightedness uncommon in legislatures. The plan was the result of a compromise between the radicals and moderates after months of thought and conference during which were manifested the best qualities of lawmakers as such qualities are estimated in the United States and England. "We have at last agreed upon a plan of reconstruction," wrote Senator Grimes, one of the committee, to his wife, "which, so far as I can learn is quite acceptable to our friends. It is not exactly what any of us wanted; but we were each compelled to surrender some of our individual preferences in order to secure anything and by doing so became unexpectedly harmonious."<sup>1</sup> Had the radicals prevailed, the plan (if I interpret the subsequent history correctly) would have been inferior in statesmanship to the one actually adopted and had the moderates had entirely their own way in the committee the necessary two-thirds vote in Congress could not have been obtained.<sup>2</sup>

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<sup>1</sup> April 30, Salter, p. 292. This was the amendment passed by the House May 10. The third section was as we have seen, entirely changed. The other sections were in essence, though not in phraseology, the same as finally agreed upon.

<sup>2</sup> Storey (*Life of Sumner*, p. 316) refers on the authority of Wilson's *Rise and Fall of the Slave Power*, vol. iii. p. 650, to the adoption by the committee

The majority report of the Joint Committee on Reconstruction written by Fessenden is a state paper eminently concise, lucid and sage. Owing to his illness it was not prepared when the resolution proposing the amendment was submitted to Congress nor was it ready while the most important steps towards the adoption of the amendment were being taken. The formal report itself therefore did not influence Congress although the arguments contained in it being presented in other ways determined their plan; and the report is significant as showing the considerations which swayed the committee, as a justification for the action of Congress and as a campaign document in the political contest of 1866.

“While the President urged the speedy restoration of these States lately in rebellion,” say the Unionists on the committee, “the impropriety of proceeding wholly on the judgment of any one man, however exalted his station, in a matter involving the welfare of the republic in all future time, or of adopting any plan, coming from any source, without fully understanding all its bearings and comprehending its full effect, was apparent.” Ample information was needed and for the purpose of procuring it the work was divided among sub-committees who severally took a large amount of valuable evidence which was submitted with the report. The evidence testifies to extensive labour, and taken in connection with Fessenden’s paper indicates that the manner of procedure was to amass facts, reflect upon them profoundly and out of the fusion evolve a plan of practical action.

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of a more radical plan than the Fourteenth Amendment. This was afterwards reconsidered and the constitutional amendment reported to the House by Stevens was substituted for it. The Journal of the Joint Committee on Reconstruction, April 21, 23, 25, 28, supports these statements. When the more radical plan was adopted Fessenden was ill but he was present when the final action was taken. On the sentiment in the committee during February see *The Nation*, Feb. 22, p. 227.

The claim that the States had a right to immediate representation in Congress was examined and demolished. The "rebels" "yielded because they could no longer resist, affording no evidence whatever of repentance for their crime and expressing no regret, except that they had no longer the power to continue the desperate struggle."<sup>1</sup> "The conquered rebels were at the mercy of the conquerors." The United States government "had a most perfect right to exact indemnity for the injuries done and security against the recurrence" of similar trouble in the future. "Your committee do not deem it either necessary or proper to discuss the question whether the late Confederate States are still States of this Union or can ever be otherwise. Granting this profitless abstraction about which so many words have been wasted, it by no means follows that the people of those States may not place themselves in a condition to abrogate the powers and privileges incident to a State of the Union and deprive themselves of all pretence of right to exercise those powers and enjoy those privileges. . . . It is most desirable that . . . at the earliest moment consistent with the peace and welfare of the nation all these States should become fully represented in the national councils and take their share in the legislation of the country. . . . By an original provision of the Constitution representation is based on the whole number of free persons in each State and three-fifths of all other persons. When all become free representation for all necessarily follows. As a consequence the inevitable effect of the rebellion would be to increase the political power of the insurrectionary States whenever they should be allowed to resume their positions as States of the Union. As representation is by the Constitution based upon population your committee did not

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<sup>1</sup> The fact stated in the sentence is indisputable but the use of the word "crime" evidences how far apart were the North and the South. What the North called a "crime" the South termed a "glory."



think it advisable to recommend a change of that basis.<sup>1</sup> . . . As the best if not the only method of surmounting the difficulty and as eminently just and proper in itself your committee came to the conclusion that political power should be possessed in all the States exactly in proportion as the right of suffrage should be granted without distinction of color or race. This it was thought would leave the whole question with the people of each State, holding out to all the advantage of increased political power as an inducement to allow all to participate in its exercise. Such a provision would be in its nature gentle and persuasive and would lead, it was hoped, at no distant day to an equal participation of all without distinction in all the rights and privileges of citizenship." In conclusion referring to the immense power assumed by the President in carrying out his policy of reconstruction the majority report said: "The constitutional form of government is thereby practically destroyed and its powers absorbed in the Executive. And while your committee do not for a moment impute to the President any such design but cheerfully concede to him the most patriotic motives they cannot but look with alarm upon a precedent so fraught with danger to the republic."<sup>2</sup>

The Fourteenth Amendment, an act of care and fore-

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<sup>1</sup> There was considerable debate on the different projects for basing representation on voters. The advocacy in 1865 and 1866 by the *Springfield Republican* and *The Nation* of an amendment to the Constitution establishing an educational test for suffrage in the whole country opened up another possibility; see *Life of Bowles*, Merriam, vol. ii. p. 19; *The Nation*, Nov. 29, 1866, p. 431.

<sup>2</sup> The report was signed by W. P. Fessenden, James W. Grimes, Ira Harris, J. M. Howard, George H. Williams, Thaddeus Stevens, Justin S. Morrill, Jno. A. Bingham, Roscoe Conkling, George S. Boutwell. I do not know why E. B. Washburne and H. T. Blow did not sign the report. The three Democratic members made a minority report. The reports and evidence are printed in vol. ii., *Reports of Committees*, 39th Cong. 1st Sess. The reports are printed by McPherson, p. 84, and the names of Washburne and Blow appear affixed to the majority report.

sight,<sup>1</sup> a fitting complement to the Thirteenth, was a logical result of the deliberations of the Joint Committee on Reconstruction. The first section incorporated the bill of Civil Rights into organic law. In discussions at the South in their work of reorganization the opinion of the Supreme Court in the Dred Scott case<sup>2</sup> was appealed to in support of harsh legislation against the negroes. It was therefore a proper sequel to the social revolution which had taken place that the Constitution should deny the obiter dictum of Taney and as a result of the war should declare that the negroes had become citizens and had "rights which the white man was bound to respect."

Of all proposed solutions of the question of negro suffrage none was so wise as the second section of the Fourteenth Amendment. As is well known, representation in the Southern States owing to one of the compromises of the Constitution, was based on the free population plus three-fifths of the slaves.<sup>3</sup> To take a concrete example, South Carolina, where the coloured people exceeded the whites, was entitled according to the apportionment under the census of 1860 to 4 representatives, 2 of which were due to counting three-fifths of the slaves. If her representation was based upon the whole population, black as well as white, she would have the privilege of sending 5 members to the House but only 2 if she denied the negro the franchise. Under the 1860 census apportionment the eleven States which had joined the Confederacy had 61 representatives, 16 of which were based on the three-fifths provision. If they enfranchised the negroes they would have 70 members; if they denied the coloured man the vote, their representation would be reduced to 45.<sup>4</sup>

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<sup>1</sup> Contrariwise the Springfield *Republican* which was not radical called it "a shabby piece of joiner-work." — Life of Bowles, Merriam, vol. ii. p. 27.

<sup>2</sup> Vol. ii. p. 255.

<sup>3</sup> Vol. i. p. 17.

<sup>4</sup> These figures are taken from a carefully prepared table presented in the House by Roscoe Conkling Jan. 22, p. 357. The results are different from

The short-sighted Southern politician, the one who refuses a fair concession in the expectation of getting more, was seen in Alexander H. Stephens. "The people of Georgia," he said, "feel that they are entitled under the Constitution of the United States to representation. . . . I do not therefore think that they would ratify the amendment suggested [one to base representation substantially on voters] as a condition precedent to her being admitted to representation in Congress."<sup>1</sup> The broad-minded and candid man ready to accept a fair proposition without haggling, was seen in Robert E. Lee. The substance of the proposed amendment<sup>2</sup> being unfolded to him, he said in his testimony before the Joint Committee on Reconstruction, "So far as I can see I do not think the State of Virginia would object to it." "Would she consent under any circumstances," asked Senator Howard, "to allow the black people to vote, even if she were to gain a larger number of representatives in Congress?" "That would depend upon her interests," replied Lee. "If she had the right of determining that, I do not see why she should object. If it were to her interest to admit these people to vote, that might overrule any other objection that she had to it." "What," returned Howard, "in your opinion would be the practical result? Do you think that Virginia would consent to allow the negro to vote?" "I think that at present," said Lee, "she would accept the smaller representation. I do not know what the future may develop. If it should be plain to her that these

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Stevens's hasty reckoning by percentages, *Globe*, p. 74. A rigid enforcement of this provision might have lost Kentucky and Missouri, without negro suffrage, each a member but it would not have affected Delaware or Maryland.

<sup>1</sup> Testimony, April 11, Reconstruction, Arkansas, etc., p. 162.

<sup>2</sup> The amendment reported by Stevens Jan. 31, *ante*, p. 594, which he regarded as better for the North than sec. 2 of the Fourteenth. Sumner however, as we have seen, opposed the former and voted for the latter. So far as I am able to see they are essentially the same.

persons will vote properly and understandingly, she might admit them to vote.”<sup>1</sup>

The theory of the second section of the Fourteenth Amendment is clear. Applying in its general terms to all the States it was especially directed at those of the South, and properly so, as the large number of former slaves constituted a peculiar condition. The Republicans believed that for ten years before the war the South in combination with the Northern Democrats had lorded it over the North and when her dominion had received a check she had appealed to the sword. Now the God of battles having decided against her the Republicans proposed, since they had the power, to prevent, by fair means if possible, a restoration of that joint control. They practically said to the South, if you do not enfranchise the negroes it is not right that you should have a representation based on that population—in other words, the inequalities which will in a greater or less degree obtain under a representative government must not be in your favour. Instead of having a larger voice in the national councils your influence, as the vanquished in an unsuccessful revolution or attempt to maintain a supposed constitutional principle should be diminished. Under the then survival of the war sentiment, so cogent an argument could not fail to be crystallized in a legislative act: at the present day<sup>2</sup> the strength of the argument and the essential justice of the measure will at the North be hardly questioned. To harmonize with present conditions and to receive the sanction of a future generation is a tribute to any scheme of legislation.

But Congress were more lenient in practice than in theory. Their intent regarding the enforcement of this second section may be best inferred by their action in the case of Tennessee. Her eight representatives, based on the apportionment of 1862, one of whom was due

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<sup>1</sup> Testimony, Feb. 17, Reconstruction, Virginia, etc., p. 134.

<sup>2</sup> 1904.



to three-fifths of her slaves, were admitted to the House. Had the congressional plan of reconstruction been accepted by the South, members from the several States, fifty-three in all (in addition to Tennessee), would undoubtedly have been let in on the same basis. That representation would not probably have been changed until 1872, as previous to that, an apportionment could not have been made based on the census of 1870, and, had the proposition been accepted at once, it is not likely that Congress would have ordered a new census or diminished by percentages the Southern representation. What Johnson and the Southerners claimed as their rightful share in the national legislature was offered them for six years, during which they could deliberate on the question of negro suffrage and at the end of which their sixty-one representatives and twenty-two senators (in these numbers Tennessee is included) would have a part in establishing the machinery for the enforcement of this section.<sup>1</sup>

Section third of the Fourteenth Amendment was more merciful than the original section reported from the Committee on Reconstruction and was so regarded by the Johnson Republicans and Democrats;<sup>2</sup> and yet it is the only part of the amendment open to criticism from the historical perspective. The effect of it was to render ineligible to Federal or State offices a large number of men whose influence was needed to induce the South to accept the new order. Governor John A. Andrew saw what was the correct policy and in his vale-

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<sup>1</sup> It is of course difficult to establish the probable action of Congress but I feel pretty sure of my judgment. For a further search than my own I have again had recourse to D. M. Matteson. A fair inference from the conflicting testimony supplied by his references to the *Globe* brings me to the same conclusion. See the *Globe* from May 1, 1866 on, pp. 2332, 2543, 2858, 2879, 2948, 3090, 3170, 3202-3203, 3303, 3948, 3950, 3977, 3978, 3980, 3981, 3987, 3990, 3991, 3992, 3994, 3996, 3999, 4000, 4003, 4007, 4056, 4102, 4157, 4303, 4305; Appendix, p. 282.

<sup>2</sup> See the votes, *ante*, p. 596.

dictory address to the Massachusetts legislature January 4, 1866 outlined it in those logical and generous words to recall which awakens regret for his untimely death before he had the opportunity to consecrate to the nation the talents which had been so serviceable to his Commonwealth. "I am confident," he said "we cannot reorganize political society with any security: 1. Unless we let in the *people* to a co-operation and not merely an arbitrarily selected portion of them. 2. Unless we give those who are by their intelligence and character, the natural leaders of the people, and who surely will lead them by-and-by, an opportunity to lead them now."<sup>1</sup>

Andrew saw things as they really were and thought straight; his idea might have been realized had not the

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<sup>1</sup> Nevertheless Andrew did not blink the facts. "Everybody in the Rebel States," he said, "was disloyal with exceptions too few and too far between to comprise a loyal force sufficient to constitute the State, even now that the armies of the Rebellion are overthrown. . . . The truth is the public opinion of the white race in the South was in favor of the rebellion. The colored people sympathized with the Union cause." The men opposed to secession "were with very few exceptions not the leading minds, the courageous men, the impressive and powerful characters—they were not the young and active men. And when the decisive hour came, they went to the wall. . . . The Revolution either converted them or swept them off their feet. Their own sons volunteered. They became involved in all the work and in all the consequences of the war. . . . All honor to the loyal few! But I do not regard the distinction between loyal and disloyal persons of the white race, residing in the South, during the rebellion, as being, for present purposes, a practical distinction. It is even doubtful whether the comparatively loyal few (with certain prominent and honorable exceptions) can be well discriminated from the disloyal mass. . . . The capacity of leadership is a gift not a device. They whose courage, talents and will entitle them to lead, will lead. . . . Why not try them? They are the most hopeful subjects to deal with in the very nature of the case. They have the brain and the experience, and the education to enable them to understand the exigencies of the present situation. . . . Reorganization in the South demands the aid of men of great moral courage, who can renounce their own past opinions and do it boldly; who can comprehend what the work is and what are the logical consequences of the new situation; men who have interests urging them to rise to the height of the occasion." This address is printed in the regular official document, in pamphlet and in Chandler's *Memoir of Andrew*. I have quoted from the last, p. 251 *et seq.* See *Life of Andrew*, Pearson, vol. ii. p. 276.

President quarrelled with Congress. It may be conjectured that the third section of the amendment was necessary to gain the support of the radicals on the committee and in Congress and to placate a certain sentiment in the country at large, which a year previous had demanded that a number of the Southern leaders should be hanged. Now nobody desired the execution of any "rebel" except Jefferson Davis and the number who clamoured for that had steadily diminished and was still on the wane. But men could not relinquish the feeling that there ought to be some punishment for "rebellion and treason" and the penal quality of this section seemed to satisfy a popular wish. It was indeed right that Davis, Benjamin, Thompson and certain others should be debarred from holding office; but it was eminently desirable that Robert E. Lee, Wade Hampton and the officers generally of the Confederate army, Stephens,<sup>1</sup> Herschel V. Johnson, Governor Brown of Georgia, Governor Vance of North Carolina and others of the same character and standing should be permitted to represent their constituents just as soon as such a policy could receive the assent of the Northern public. If Congress had had confidence in the President this might have been easily managed; they would undoubtedly have given him the power of removing the disability instead of providing the more cumbrous process of a two-thirds vote of their own body.

The fourth section of the amendment requires no defence. Its statements carry their own justification. If there was danger of a movement to repudiate in any way the United States debt or assume the Confederate Section 4 was necessary as a quietus; if the alleged movement was a bugbear the section was needed so that it could no longer intrude into the consideration of the other pressing questions of reconstruction.

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<sup>1</sup> I have presented Stephens in various aspects but I am satisfied that he would have been an efficient help in the work of reconstruction.

[This then was the offer of Congress to the South — the Johnson conditions plus the acceptance and ratification of the Fourteenth Amendment.<sup>1</sup>] Not so generous as the President's policy the congressional plan was marked by even-handed justice. More carefully wrought out it gained friends by the dignified advocacy of it, while the merit of Johnson's policy was neutralized by the brutality of its apologist. Only by contrast with General Sherman's and the President's projects does it seem to lack generosity; compared with the settlement of any other notable civil war by a complete victor, it is magnanimous in a high degree. It involved no executions, no confiscation of property, no imprisonments. It virtually allowed the vote to every white man on his taking an oath to support the Constitution and it did not admit one negro to the franchise. It vouchsafed to the Southern States the management of their own local affairs subject to the recognition of the civil rights of the negroes, to the Freedmen's Bureau limited in time, and to a temporary military occupation. As a counterpoise to these advantages it held over the South a possible curtailment of representation and for the moment rendered ineligible to office a large number of her leaders. [The Southern States ought to have taken advantage of the offer eagerly and at once.]

It is asserted that the radicals neither desired nor expected the South to ratify this amendment, believing that the penal section would be the stumbling-block.<sup>2</sup> Stevens indeed no sooner secured one set of conditions than he began to contrive for others and Sumner never pretended that he would consider as final any plan of

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<sup>1</sup> During the year 1866 this amendment was ratified by New Hampshire, Vermont, Connecticut, New Jersey, Tennessee and Oregon. All the necessary ratifications were not had until 1868. The certificate of the Secretary of State to its ratification and validity is dated July 20, 1868. McPherson, pp. 194, 379.

<sup>2</sup> Dewitt, pp. 93-96; see Pierce's Sumner, vol. iv. p. 283; Julian's Political Recollections, p. 272.



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reconstruction that did not establish impartial suffrage. But their following at this time was not large. John Sherman undoubtedly spoke for the bulk of the Union party in Congress, a number sufficient to constitute a legislative majority, when he wrote on July 2, "The very moment the South will agree to a firm basis of representation I am for general amnesty and a repeal of the test oaths."<sup>1</sup>

A joint resolution proposing a constitutional amendment is not sent to the President for approval as it requires originally two-thirds of Congress; but if Johnson had sympathized with the Fourteenth Amendment the ratification of it by the Southern States would certainly have ensued. Two interviews of his indicate that he might have been expected to support the section pertaining to the basis of representation.<sup>2</sup> The third section was in the spirit of his amnesty proclamation of May 29, 1865 only Congress instead of the President had the power of remission; the fourth he was avowedly in favour of: and to consent to the first section would have been a graceful acceptance of an accomplished fact — the grant of civil rights to the negroes by national law. But he had no idea of yielding an inch and set his face against the amendment, sending gratuitously a message to Congress in which he doubted the propriety of amending the Constitution when eleven States were excluded from representation.<sup>3</sup> While the matter was pending in the Senate, Sumner anticipated Johnson's opposition, writing thus to Bright: "The people sustain Congress which stands firm. But there is no hint that the President will give way; he is indocile, obstinate, perverse, impenetrable and hates the education and civilization of New England."

<sup>1</sup> Sherman Letters, p. 271. This is the John A. Andrew policy, which implied a repeal of the iron-clad oath (*ante*, p. 541, note 1) — an oath properly required during the war but now an impediment to reconstruction.

<sup>2</sup> McPherson, pp. 49, 51; see also General Sherman's opinion, *Sherman Letters*, p. 264.

<sup>3</sup> June 22, McPherson, p. 83.

Seward encourages him ; McCulloch is bitterly with him ; Dennison sometimes with him and sometimes against him ; Welles is with him ; Stanton, Harlan and Speed are against his policy. . . . When I speak of the opinions of these men I speak according to my personal knowledge, from conversation with each of them. I do not think that they are always frank with the President.”<sup>1</sup>

On July 11 Dennison resigned, chiefly because he differed with the President about the Fourteenth Amendment, which he approved, and about the movement for a popular convention at Philadelphia to sustain the administration which he opposed ; and before the month was out Speed and Harlan also sent their resignations to their chief.<sup>2</sup>

On July 28 Congress adjourned. Elections for members of the Fortieth Congress were to be held in the autumn. The President on one side, the majority of Congress on the other were to appeal to the country.

Two days after Congress adjourned a riot took place in New Orleans in which 37 negroes and 3 of their white friends, but only 1 of their assailants, were

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<sup>1</sup> May 21, Pierce's Sumner, vol. iv. p. 288. A quasi-official article in the *National Intelligencer* of May 2 (*Globe*, p. 2333, Dewitt, p. 93) corroborates this in part directly, in part by indirection except in regard to Stanton. Stanton opposed the third section as originally reported to the House. See his speech, May 23, *Life*, by Gorham, vol. ii. p. 309. But Stanton in the main was friendly to the policy of Congress. He advised the President to approve the Freedmen's Bureau Bill, *ibid.*, p. 308, also the Civil Rights Bill, *ante* ; see his letter of Dec. 12, 1867, Gorham's Stanton, vol. ii. p. 420. For the President's position regarding the amendment, see his message to Congress, June 22, *Globe*, p. 3356.

<sup>2</sup> New York *Tribune*, July 16, 17, 30 ; Appleton's Annual Cyclopædia, 1866, p. 756. Seward wrote July 17 before the resignation of Harlan : “ I part with Mr. Dennison and Mr. Speed with regret. . . . It does not surprise although it pains me, that all of my associates have not been able to see it their duty, as I see it mine, to sustain the President.” — *Life of Seward*, vol. iii. p. 330. Dennison was succeeded by A. W. Randall of Wisconsin, the First Assistant Postmaster-General ; Speed by Henry Stanbery of Ohio, “ a lawyer of high reputation and a gentleman of unsullied character ” ; Harlan by O. H. Browning, “ who had been a devoted friend of Lincoln.” Blaine, vol. ii. p. 219.

killed; 119 negroes, 17 of their white sympathizers but only 10 others were wounded. This occurrence had an influence on Northern sentiment highly damaging to Johnson's cause.

The trouble arose from a conflict between men who looked to Congress for support and others who looked to the President. The State government of Louisiana had partly and the city of New Orleans wholly fallen under the control of the ex-Confederates subject of course to the continued military occupation; but another faction of "political agitators" and "bad men"<sup>1</sup> had started a movement by which they hoped to secure for themselves the power. They brought about a meeting of the convention of 1864 for the purpose of remodelling the constitution of the State and admitting the negroes to the suffrage. Three days before it assembled a large meeting of coloured people was addressed from the steps of the city hall by some of the machinators and at least one speech "intemperate in language and sentiment"<sup>2</sup> was made. "I want the negroes to have the right of suffrage and we will give them their right to vote," the speaker said. "We have three hundred thousand black men with white hearts. Also one hundred thousand good and true Union white men who will fight for and beside the black race against the three hundred thousand hell-hound rebels. . . . We cannot only whip but exterminate the other party. . . . If interfered with, the streets of New Orleans will run with blood."<sup>3</sup>

The occasion of the riot on the day that the delegates met was a procession of coloured men marching to the convention hall which excited unfriendly demonstrations from the crowd of white people in the streets. Shots were fired and "a rush upon the procession"<sup>4</sup> was made,

<sup>1</sup> Words of General Sheridan in command of the department.

<sup>2</sup> Sheridan.

<sup>3</sup> Appleton's Annual Cyclopædia, 1866, p. 454.

<sup>4</sup> Sheridan.

but the negroes reached the Mechanics' Institute (the place of meeting) and entered the hall. On some provocation probably, the large force of police, who had been ordered to the scene opened fire on the building through the windows but ceased when a white flag was hung out; they then entered the Institute and fired upon the negroes in the convention hall; by them and by others of the white mob deeds of cruelty and wanton violence were perpetrated. A misunderstanding prevented the Federal troops from reaching the scene in time to prevent the conflict but afterwards owing to the intense feeling of the citizens against the negroes the general in command felt compelled to declare martial law.

Out of the mass of conflicting testimony and partisan comment two facts were clear. Nearly all the victims were negroes. The police,—of whom three-quarters were ex-Confederate soldiers and one of them “a notorious thief,” under the direction of the mayor, an unreconciled Confederate and “bad man,”<sup>1</sup>—had joined with the white mob instead of quelling the riot. “It was no riot,” telegraphed Sheridan to Grant, “it was an absolute massacre by the police which was not excelled in murderous cruelty by that of Fort Pillow. It was a murder which the mayor and police of this city perpetrated without the shadow of a necessity.” At the North it was easy to draw the inference that the coloured people were not safe in the hands of their former masters.<sup>2</sup>

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<sup>1</sup> Sheridan.

<sup>2</sup> The correspondence of Sheridan, Baird (the general in immediate command), the governor, lieutenant-governor and attorney-general of the State, and the mayor from New Orleans with the President, Stanton and Grant is printed in House Ex. Doc. No. 68, 39th Cong. 2d Sess., also the report of the Military Board of Investigation, Sept. 6, and other reports. The majority and minority reports of the Select Committee of the House are printed in Report No. 16. With the evidence and index they make a volume of 596 pp. entitled “Riots in New Orleans.” See also Personal Memoirs of Sheridan, vol. ii. p. 233; Appleton's Annual Cyclopædia, 1866, p. 452; letter of Stanton, Dec. 12, 1867, Gorham's Stanton, vol. ii. p. 422. On public sentiment, Appleton's Annual Cyclopædia, 1866, pp. 400, 459, 546; *The Nation*, Aug. 2, 9;



The campaign of 1866 for the election of a House of Representatives and a number of State legislatures which should choose senators took on the character of a presidential canvass. Four national conventions were held. Seward and Weed, with the concurrence of the President and Henry J. Raymond<sup>1</sup> got up the first, the "National Union" which met in Philadelphia on August 14. The delegates from the Northern States were chosen from the Republican and Democratic parties and those from the South were moderate men. Every State was represented and the renewal of former political, social and personal relations between representatives of the two sections was a cause of rejoicing. The convention was held in a large wigwam built for the occasion and the proceedings which were directed by prominent men of both parties were attended by an enthusiastic audience of 12,000 to 15,000. The spirit of the assemblage was typified on the first day by the delegates of Massachusetts and South Carolina walking in together arm-in-arm; and on the third by those same men rising and cheering in unison the resolution which declared slavery abolished and forever prohibited and that the enfranchised slave should receive "equal protection in every right of person and property." What occurred during the session of the committee on resolutions emphasizes the sincerity of the Southerners. When Raymond read the first line of the seventh resolution, "Slavery is abolished and forever prohibited" Judge Yerger of Mississippi said, "Yes and nobody wants it back again," whereupon Raymond remarked "If we can say *that* on behalf of the South and on the authority of its delegates it will strengthen our case very much." In

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Blaine, vol. ii. p. 237; Dewitt, p. 110; Life of Seward, vol. iii. p. 335. On the 1st, 2d, and 3d of May there were riots in Memphis in which twenty-four negroes were killed and one white man wounded. Appleton's Annual Cyclopædia, 1866, p. 730.

<sup>1</sup> Raymond's co-operation was reluctant.

his diary he thus continued the account: "Judge Yerger said we could so far as his State was concerned and turned to Governor Graham of North Carolina and asked if it would not be true of North Carolina. Governor Graham answered that it would and of the whole South also." This prompted Raymond to add these words: "and there is neither desire nor purpose on the part of the Southern States that it [slavery] should ever be re-established upon the soil or within the jurisdiction of the United States."<sup>1</sup> After thirty-six years of observation, study and reflection I am convinced of the absolute truth of this statement.

The main feature of the resolutions in so far as they touched on controverted points, was the approval of President Johnson's reconstruction policy. The Democrats supported this movement heartily but it was recognized that to carry the elections there must be the co-operation of a large number of voters from the Union or Republican party and the leaders bore this constantly in mind. Fernando Wood and Vallandigham had been accredited as delegates but the pains taken to eliminate all Copperhead colour would go for naught if they took part in the convention. Nevertheless their formal exclusion after a heated debate might split the embryo party in twain. Wood appreciating the difficulty withdrew at once gracefully but considerable pressure was necessary to induce Vallandigham to relinquish a contest for his rightful seat.<sup>2</sup>

As is the case in all national conventions a number of office-seekers were present in Philadelphia but apart from them it was a noble and patriotic assemblage whose proceedings were dignified. Of the four conventions it

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<sup>1</sup> *Scribner's Monthly*, June, 1880, p. 279.

<sup>2</sup> My principal authorities are the *Journal of H. J. Raymond*, *Scribner's Monthly*, June, 1880, p. 276; *The Nation*, especially the account of the eyewitness, Aug. 23, p. 152; *Harper's Weekly*; *Appleton's Annual Cyclopædia*, 1866, p. 757; *Blaine*, vol. ii. p. 220. See also *Memoir of R. C. Winthrop*, p. 269; *Life of Vallandigham*, p. 409.

shared with the later and opposing one at Pittsburg a spontaneity differing from the other two, and it bade fair to influence public sentiment in a manner that would effectually display itself at the autumn elections. The Johnson supporters had high hopes and may have dreamed of a majority in the new House but any astute observer knew that such a result was not conceivable. The Northern people were with Congress and the only question was how largely would the Congressional party prevail; yet with a proper development of the sentiment aroused by the Philadelphia convention it was possible that the President's party would secure considerably more than one-third of the representatives to be elected in the autumn. Thomas Nast, the caricaturist, portrayed the efficient permanent president of the convention, Senator Doolittle, padlocking the mouths of aspiring delegates lest they might utter other than patriotic sentiments and disturb the "unbroken harmony."<sup>1</sup> Could the senator have applied his padlock to Johnson his and his co-workers' attempt to found a new party might not have been so speedily crushed. The counteraction of the patient labour of weeks and the sagacious management of a heterogeneous convention began the next day after its adjournment with injudicious words of the President. In his speech to the committee who presented him with an official copy of the proceedings of the convention he said, "We have seen hanging upon the verge of the government, as it were, a body called, or which assumes to be, the Congress of the United States — but in fact a Congress of only part of the States."<sup>2</sup> In this declaration, which was one of the gravest impropriety there lurked, in the view of the public, a serious danger. It had been whispered that if a sufficient number of Johnson supporters could be chosen to Congress from

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<sup>1</sup> *Harper's Weekly*, Sept. 29.

<sup>2</sup> Revised report used in the Impeachment of the President, Trial of Johnson, vol. i. p. 302. This will be referred to hereafter as "Trial."

the Northern and Border States, the President would recognize them and the representatives and senators elect of the late Confederate States as the Congress and command the army to sustain their possession of the Capitol. That such a course would be pursued was an idle fear. The ruler who advertises it is not one who executes a *coup d'état* and Johnson was alike too timorous and too patriotic to resort to violence. He undoubtedly deemed this an election *argumentum ad hominem*, so little comprehension had he of Northern sentiment and the weapon with which he was furnishing his adversary.

But the speech in the White House was a trifle in comparison with what followed. Johnson's "election-eering tour" through the country, his "swinging around the circle" (as it was called from words of his own in one of his previous harangues<sup>1</sup>) nullified the favourable effect of the Philadelphia convention and ruined his chance of securing a strong minority in the next Congress. Invited to take part in the ceremony of laying the corner-stone of a monument to Stephen A. Douglas in Chicago he made it an opportunity of visiting the principal cities of the North and addressing the people, a means of influencing public opinion in which he had great faith. The President was accompanied by Seward, Welles, Randall (Postmaster-General), General Grant and Admiral Farragut. Grant's invitation came in the shape of an order as presumably did Farragut's and Stanton also received word that his company was desired by the President but he did not obey the command.<sup>2</sup> Leaving Washington on August 28 the stop in Philadelphia was without incident and that in New York was signalized by a partisan, egotistical speech of the President in which he told a sympathetic audience

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<sup>1</sup> Feb. 10, McPherson, p. 58.

<sup>2</sup> Life of Stanton, Gorham, vol. ii. p. 329; *The Round Table*, Sept. 15, p. 99. Seward wrote privately Aug. 25, Mr. and Mrs. Stanton "cannot go with us which they regret." — Life of Seward, vol. iii. p. 340.



that he had "filled every office in the country" "from the position of the lowest alderman in your city to President of the United States."<sup>1</sup>

From New York to Cleveland a number of stops were made and part of the journey was "an indecent orgy";<sup>2</sup> indeed no such presidential progress has ever been known. When Johnson appeared on the balcony of the Kennard House in Cleveland (September 3) to speak to the people he was intoxicated: the brutality of his nature was uppermost rendering him especially unfit to address a mass of men who for the most part were partisans of Congress. A scene ensued which seemed to drag the presidential office to the lowest depth of degradation. "I was placed upon the ticket," he said, "with a distinguished fellow-citizen who is now no more. I know there are some who complain. [A voice, "Unfortunately."] Yes unfortunate for some that God rules on high and deals in right. . . . Who can come and place his finger on one pledge I ever violated or one principle I ever proved false to? [A voice, "How about New Orleans?" Another voice, "Hang Jeff Davis."] Hang Jeff Davis, he says. Hang Jeff Davis. Why don't you hang him? Haven't you got the court? Haven't you got the Attorney-General? Who is your Chief Justice and has refused to sit upon the trial? . . . I called upon your Congress that is trying to break up the Government. [Cries, "You be d—d" and cheers mingled with hisses. Great confusion. "Don't get mad Andy."] Well I will tell you who is mad. 'Whom the gods wish to destroy, they first make mad.' Did your Congress order any of them to be tried? [Three cheers for Congress.] . . . In this crowd here to-night the remark has been made, 'Traitor, Traitor!' My countrymen will you hear me? . . . I want to know when or where or under what circumstances Andrew Johnson

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<sup>1</sup> McPherson, p. 134.

<sup>2</sup> Lowell, *post*.

ever deserted any principle or violated the Constitution of his country." [Cries of "Never" and "You abandoned your party."] As the bandying of words went on he heard a voice from the crowd, "Is this dignified?" "I understand you," he retorted. "You may talk about the dignity of the President. [Cries, "How was it about his making a speech on the 22d of February?"] . . . I care not for my dignity. A certain portion of our countrymen will respect a citizen wherever he is entitled to respect. . . . [A voice, "Traitor."] I wish I could see that man. I would bet you now that if the light fell on your face, cowardice and treachery would be seen in it. Show yourself. Come out here where I can see you. . . . I come here neither to criminate or recriminate but when attacked my plan is to defend myself." He continued with a defence of his policy. Towards the end of his harangue he was asked "How about Louisiana?" to which he replied, "You let the negroes vote in Ohio before you talk about negroes voting in Louisiana."<sup>1</sup>

The celebration at Chicago passed off with "comparative decorum";<sup>2</sup> but in St. Louis (September 8) the President irritated by cries of "New Orleans," broke out into a charge that the riot there was "substantially planned" by the "radical Congress." He defended "my policy" and abused his opponents, imputing to many of them in essentially vulgar terms a desire to hold on to the Federal offices. He alluded to Christ and Judas, to Moses, to Thaddeus Stevens, Wendell Phillips and Charles Sumner, in a manner that would have been blasphemous and vituperative even in a stump speaker.<sup>3</sup> At Indianapolis on his homeward journey he was

<sup>1</sup> McPherson, p. 134; Trial, vol. i. p. 325; Dewitt, p. 115; editorial comments of Cleveland *Herald*, Sept. 4, 6, 7, 10, *Plain Dealer*, Sept. 5, 6, 7, *Leader*, Sept. 5, 7; Boston *Advertiser*, Sept. 5; New York *World*, Sept. 6, *Times*, Sept. 7, *Tribune*, Sept. 8, *Evening Post*, Sept. 11.

<sup>2</sup> Dewitt, p. 118.

<sup>3</sup> McPherson, p. 136; Trial, vol. i. p. 340.

silenced by the yelling and hooting of a mob which further insulted him with contumelious taunts.<sup>1</sup>

The President returned to the White House utterly discredited before the country. The words of *The Nation* were as accurate as any such general statement can be, "Probably no orator of ancient or modern times ever accomplished as much by a fortnight's speaking as Mr. Johnson has done."<sup>2</sup> Lowell spoke of the journey as "an advertising-tour of a policy in want of a party," and an "unhappy exposure of the unseemly side of democratic institutions"; of Johnson as "the first of our chief magistrates who believed in the brutality of the people and gave to the White House the ill-savor of a corner-grocery."<sup>3</sup> The feeling against him, wrote John Sherman, "was intensified by his conduct in his recent tour when he sunk the Presidential office to the level of a grog-house."<sup>4</sup> A policy devised by the angels could not stand such advocacy and the ratting from the party of the President to the

<sup>1</sup> Dewitt, p. 123; Life of Morton, Foulke, vol. i. p. 483.

<sup>2</sup> Sept. 27, p. 241.

<sup>3</sup> The Seward-Johnson Reaction, *North American Review*, Oct. 1866, pp. 525, 526, 528, 529. This is a strong piece of political satire. The following will impress any one who has read Johnson's speeches: "For so much of Mr. Johnson's harangues as is not positively shocking, we know of no parallel so close as in his Imperial Majesty Kobes I. :—

“ ‘Er rühmte dass er nie studirt  
Auf Universitäten  
Und Reden sprach auch sich selbst heraus,  
Ganz ohne Facultäten.’ ” — p. 524.

Lowell had no sympathy with the ostensible object of the journey, and gave a merciless characterization of Douglas. He and Charles Eliot Norton were joint editors of the *Review*, and this number contains a bitter attack on Douglas from George W. Curtis. The circulation of the *Review* was probably small, and I do not know how extensively extracts from these articles were copied in the press. But Lowell's article, and in a very much less degree Curtis's as a background, made a very effective campaign document. I remember well their powerful impression on me at the time; and in re-reading them I comprehend their potency.

<sup>4</sup> Oct. 26, Sherman Letters, p. 278.

party of Congress assumed large proportions.<sup>1</sup> Johnson attempted to arrest the run by replacing steadfast Republicans with his own adherents: during the campaign he removed 1283 postmasters and made similar decapitations in the custom-houses and internal revenue offices.<sup>2</sup> But as this sometimes meant turning out of "wounded soldiers" and "putting in men who opposed the war throughout" the operation did him probably more harm than good.<sup>3</sup>

The three national conventions which succeeded the Johnson Philadelphia convention were planned before the presidential journey, otherwise none of them would have been needed. The Southern loyalists, summoned for the purpose of foiling the Johnson assemblage, came together in Philadelphia on September 3; but the delegates from the late Confederate States compared unfavourably in character or ability with those of the earlier convention and for the most part were soldiers of political fortune. "Parson" Brownlow now Governor of Tennessee, a man of less ability than Johnson but of even greater power of vituperation, was a fair representative of the better Southern element concerned in the movement; and ex-Attorney-General Speed, who was president of the convention and made an important speech gave it a character of weight and dignity. The Southern loyalists invited delegations from the Northern States for conference and accordingly prominent Republicans of high standing in the country and the party gave by their presence their approval of the convention although they met apart. The delegates from both the South and the North were received enthusiastically in

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<sup>1</sup> *The Nation*, Sept. 27, pp. 241, 243. The abandonment of Johnson by the New York *Herald* was significant.

<sup>2</sup> Dewitt, p. 108; *The Nation*, Sept. 6, p. 191; Sept. 27, p. 241.

<sup>3</sup> Sherman Letters, p. 278. Petroleum V. Nasby, the humorist of the campaign, represented himself as sympathizing with the Southern cause, and obtaining therefor the post-office at "Confederit x Roads," Kentucky, in the place of a turned-out wounded Federal soldier.



the city and the large mass-meeting in their honour was a reminder of a presidential campaign. The address which was voted by the loyalists summed up the argument of which the riots at Memphis and New Orleans were a part by charging that "more than a thousand of devoted Union citizens have been murdered in cold blood since the surrender of Lee."<sup>1</sup> These presumably were for the most part negroes.

The Johnson supporters called a soldiers' and sailors' convention which met in Cleveland September 17. Many officers assembled but among them were none of the great generals of the war. Nevertheless two features of this convention made it conspicuous. One was a letter of sympathy and good sense from Henry Ward Beecher who cast his large influence on the side of the President.<sup>2</sup> The other was a telegraphic correspondence of a fraternal and praiseworthy character with a number of Confederate soldiers assembled in Memphis. But signed to the Southern despatch was the name of N. B. Forrest, and this fact was used by the supporters of Congress to recall Forrest's alleged participation in the massacre of Fort Pillow and thereby prevent the good effect that might otherwise have been produced by this friendly exchange of sentiments between the fighters in the late conflict.<sup>3</sup>

The last convention, which met in Pittsburg Septem-

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<sup>1</sup> New York *Tribune*, Sept. 7. I doubt very much whether this number could have been substantiated.

<sup>2</sup> Aug. 30, Biography of H. W. Beecher, p. 465; Life, by Abbott, p. 282. In a private letter of Sept. 6, Beecher showed a comprehension of the state of affairs, writing: "Mr. Johnson just now and for some time past has been the greatest obstacle in the way of his own views. The mere fact that he holds them is their condemnation with a public utterly exasperated with his rudeness and violence." The New York *Evening Post* which opposed the radicals such as Stevens said Sept. 11: "It is a melancholy reflection to those who have found it their duty to support that policy [Johnson's] that their most damaging opponent is the President and that he makes a judicious course so hateful to the people that no argument is listened to, and no appeals to reason, to the Constitution, to common sense can gain a hearing."

<sup>3</sup> Blaine, vol. ii. p. 230; Appleton's Annual Cyclopædia, 1866, p. 759.

ber 25 was a large, enthusiastic and patriotic gathering of citizens, soldiers and sailors opposed to the President's policy. General J. D. Cox presided and declared that the proposition of Congress, the Fourteenth Amendment, was wise and magnanimous and received the support of those who had fought out the war.<sup>1</sup>

State conventions of the two parties were held as usual and the ordinary declarations of principles were adopted. These declarations, the resolutions of the four national conventions and the speeches made during the campaign presented a clearly defined issue to the voters. Shall the late Confederate States be admitted to representation in Congress and given control of their local affairs without further conditions as the Johnson supporters advocated or must they in addition ratify the Fourteenth Amendment which was the platform of the party of Congress? After Johnson's "swinging around the circle" the lining-up was the old one of Republicans and Democrats and so shall I designate the two parties in the future. Only a few of the Union party adhered to the President: they were men prominent in public life who having taken a position could not now consistently retrace their steps and seekers or holders of the "offices" who were called "the bread-and-butter brigade."

The radicals were not satisfied with the Fourteenth Amendment as the sole further condition of reconstruction and at times let it be known that in their opinion the negroes at the South must on some terms be given the suffrage, yet a careful study of the canvass will not fail to bring conviction that the party as a whole was committed to the policy of the Fourteenth Amendment and would stand to it in the event of success; it must moreover be continually borne in mind that victory for the Republicans necessitated the winning of a two-thirds majority in Congress.

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<sup>1</sup> Blaine, vol. ii. p. 230; Appleton's *Annual Cyclopædia*, 1866, p. 760  
New York *Tribune*, Sept. 26.

Vituperation and abuse on the part of Johnson begot the same in his opponents. Thaddeus Stevens and Benjamin F. Butler, who was a candidate for Congress in a Massachusetts district but threw himself with ardour into the canvass of the whole country, were masters of the art. One of Stevens's speeches called forth these words from *The Nation*: "The cause [*i.e.* of Congress] is worthy of the tongues of angels; but angels" as we imagine them can certainly do nothing "but weep over some of the speeches made in its defence."<sup>1</sup> Lowell had no love for Stevens and was quite willing to let him "be paired off with Vallandigham and to believe that neither is a fair exponent of the average sentiment of his party."<sup>2</sup> On the other hand Trumbull who with Fessenden stood for the plan of Congress more than any other two Republicans took a prominent part in the campaign.

While some of the President's performances during the "swing around the circle" were deemed too sad for gibes (for the country's disgrace swallowed up party advantage), his defence of what was called "my policy" and other features of the Democratic canvass lent themselves readily to ridicule. The pencil of Thomas Nast and the pen of Petroleum V. Nasby were enlisted on the side of the Republicans. As one turns over the pages of *Harper's Weekly* for the pictorial humour of the one and reads the letters contributed to the press by the other, one appreciates what effective arguments they were with a "laughter-loving people."<sup>3</sup> Postmaster Nasby wrote: "I was summoned to Washington by that eminently grate and good man Androo Johnson to attend a consultation ez to the proposed Western tour, wich wuz to be undertaken for the purpose uv arousin the masses uv the West to a sence uv the danger wich wuz threatenin uv em in case they persisted in central-

<sup>1</sup> Oct. 4, p. 261, see also Oct. 11, p. 281.

<sup>2</sup> *North American Review*, Oct. 1866, p. 535.

<sup>3</sup> Vol. ii. p. 129.

izin the power uv the Government into the hands uv a Congress instid uv diffusin it throughout the hands uv one man.”<sup>1</sup>

A reference to the New Orleans massacre was one of the potent Republican arguments. The pictures of different scenes of it in one number of *Harper's Weekly*<sup>2</sup> and Nast's delineation of the shooting down of negroes in New Orleans and Memphis as a result of Johnson's reconstruction policy<sup>3</sup> drove this argument home. Andersonville likewise was a word to conjure with. The belief still existing that Jefferson Davis may have been concerned in the assassination of Lincoln (support to which was given by Representative George S. Boutwell's report in July) and indignation that the “arch traitor” was yet unpunished were additional influences operating on men's minds.

Maine and Vermont voted in September and gave large Republican majorities. Pennsylvania, Ohio, Indiana and Iowa, then “October States” did likewise. All the Northern States that held elections in November, of which New York was the most important, indicated the same direction of the popular will. The Republican majorities in twenty Northern States were in the aggregate 405,000 which was larger than Lincoln's majority of the popular vote of 1864 exclusive of the soldiers' vote.<sup>4</sup> The Border States were divided, Delaware, Maryland and Kentucky being Democratic, West Virginia and Missouri Republican. The next Congress (the Fortieth) would consist of: Senate, 42 Republicans, 11 Democrats; House, 143 Republicans, 49 Democrats, a working majority of considerably more than two-thirds. By an overwhelming vote the people of the North sustained

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<sup>1</sup> The quintessence of this campaign fun may be found in a little volume published in 1867, entitled “Swingin round the Circle,” by Petroleum V. Nasby, illustrated by Thomas Nast. The quotation is on p. 205.

<sup>2</sup> Aug. 25.

<sup>3</sup> Sept. 1.

<sup>4</sup> *The Nation*, Nov. 15, p. 390; *Tribune Almanac*.



Congress and comprehending the situation gave the Republicans enough senators and representatives to carry out a policy of reconstruction despite any opposition on the part of the President.<sup>1</sup>

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<sup>1</sup> In my account of this campaign, I have consulted continually the files of *The Nation*, *Harper's Weekly*, and *Round Table*, and everything bearing on it in Appleton's Annual Cyclopædia for 1866. See also Sumner's address, Oct. 2, Works, vol. xi. ; Trumbull's speeches, Aug. 1, 31, *Chicago Tribune*, Aug. 2, Sept. 1 ; editorials *New York Tribune*, Sept. 27, Oct. 5, 17, 29, 30, Nov. 1, 6, 10 ; *Boston Advertiser*, Sept. 3, 11, 13, 17, Oct. 12 ; *Chicago Tribune*, Aug. 14, 24, 25, Sept. 10, 28, Oct. 3, 11, 27.

Conversations with George H. Monroe, Secretary John Hay, Thornton K. Lothrop, Henry L. Higginson, Charles F. Adams, Charles Eliot Norton, William Endicott and Edward Atkinson have assisted me much in the use of my material for this volume. I am indebted for aid to Charles K. Bolton, Librarian, and to Miss Wildman and Miss Wall, assistants in the Boston Athenæum, to C. B. Tillinghast, Librarian of the State House Library, Boston, to Herbert Putnam, Worthington C. Ford, and R. P. Falkner of the Library of Congress, to Miss Wyman, my secretary, to Mrs. Beall and D. M. Matteson ; and to my son, Daniel P. Rhodes, for a valuable literary revision of this volume.

When the Memoirs of Henry Villard and Pearson's "Life of Governor Andrew" were published the work of the printer was so far advanced that I was unable to make more than a limited use of them.

My greatest obligation for my history of the Civil War is due to the United States government for the unique publication, War of the Rebellion: Official Records of the Union and Confederate Armies (referred to in my history as O. R.). This publication of 128 volumes cost \$2,858,574.67, army officers' pay not included (vol. 130, p. v). Rarely has money for the behoof of history been better spent. Devoted to this great work have been the zeal, intelligence and good judgment of the editors and their assistants. In the preface to the General Index, published in 1901 (Serial No. 130), signed by Elihu Root, Secretary of War, is given an interesting history of the enterprise, the first volume of which was published in '81 and the last twenty years later. The work of compilation was begun under Stanton and continued under the direction of the secretaries of war, his successors, from General Grant to Elihu Root (vol. 130, p. iii). The names of men who as editors or assistants have had to do with this publication are mentioned (see pp. vii, xxi), and they should be inscribed on a historic roll of honour. Of them I shall name Robert N. Scott, Marcus J. Wright, George B. Davis, Leslie J. Perry, Joseph W. Kirkley, George W. Davis, Fred. C. Ainsworth. Secretary Root writes (p. xxi), "It is but just to say that the name most closely associated with the work from its inception to its completion is that of Joseph W. Kirkley." The acknowledgments of the War Department to the Confederate generals, to Jefferson Davis and his widow for assistance in the collection of materials and the facts stated in connection therewith have probably no parallel in historical literature.

## CHAPTER XXXI

A BRIEF summary of my previous chapter may be useful. When Andrew Johnson became President he endeavoured to reconstruct the shattered Union substantially on the lines which Lincoln had laid down. He imposed three conditions on the late Confederate States which they must comply with before they should be entitled to representation in Congress. These were, the repeal of their ordinances of Secession, the abolition of slavery by their conventions and the ratification of the Thirteenth Amendment by their legislatures, and the entire repudiation of their State debts incurred in the prosecution of the War. These conditions were with slight exceptions complied with and, on the assembling of Congress in December 1865, it seemed to Johnson that the senators and representatives elect from the Southern States ought to be admitted to their seats in the Senate and the House. It was evident, however, from the beginning that Congress proposed to have a hand in this important work and through a Joint Committee on Reconstruction and the Committees on the Judiciary they constructed a policy of their own impos-

ing still other conditions on the Southern States. They passed a law conferring full civil rights on the negro and widened the scope of the Freedman's Bureau which had been established before the death of Lincoln. They adopted the Fourteenth Amendment and required of the Southern States its ratification before they should be restored to their old place in the Union. President Johnson vetoed the first Freedman's Bureau bill, February 19, 1866 and somewhat later the Civil Rights bill, and thereby became involved in a quarrel with Congress which was intensified by vituperative speeches of his and of Thaddeus Stevens, the leader of the House of Representatives. When Congress adjourned in July 1866 the executive and legislative departments of the nation were at swords' points and both appealed to the country for endorsement. An exciting campaign followed. Johnson lost his chance of securing a third of the House of Representatives by his foolish and disgraceful stumping tour through the country and the victory of the Republicans was overwhelming, a majority being secured of considerably more than two-thirds of the next Congress.

The elections decided that the late Confederate States must ratify the Fourteenth Amendment as a condition precedent to their readmission into the Union.<sup>1</sup> The

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<sup>1</sup> For the Fourteenth Amendment see previous chapter; for an analysis and discussion of it, *ibid.*, p. 87 *et seq.* Briefly stated it is this: The first section made the negroes citizens—in other words made them equal to the white men before the law, conferred upon them rights which the white man was bound to respect. The intent of the second section was to reduce the representation in Congress from the Southern States, which was based on the negro population, unless those States should give the negro the suffrage. The third section disfranchised from Federal and State offices most of the military and political leaders of the Southern States during the Civil War, but provided that Congress might remove the disability by a two-thirds vote. The fourth section made sacred the public debt of the United States and payments for pensions; and provided that no debts of the Southern Confederacy should be paid nor should there be any compensation for the emancipated slaves. The important point to bear in mind is that the Fourteenth Amendment did not force negro suffrage upon the South.

question now was, would the Republicans strengthened by an electoral success beyond their early hopes adhere to their virtual offer and exact nothing further? A bill reported with the Fourteenth Amendment from the Joint Committee on Reconstruction in April 1866, which would have bound Congress, was not passed, but morally Congress was already under obligation to admit Southern senators and representatives should their States ratify the Fourteenth Amendment. Blaine, however, quick to catch the drift of popular sentiment, declared in the House one week after Congress had assembled [December 10, 1866] that the people had demanded at the ballot box an additional condition of reconstruction viz., the conferment of suffrage on the negroes.<sup>1</sup> This is notable as Blaine was not one of the extreme Radicals. Fessenden also implied that further guarantees might be necessary<sup>2</sup> and Senator Edmunds felt sure that negro suffrage must come.<sup>3</sup> Some of the Radicals were emphatic in their denial of any agreement to admit the other States as Tennessee had been admitted. Sumner regarded the Amendment as an instalment not a finality<sup>4</sup> and Stevens derided the idea that it could be accepted as a satisfactory settlement.<sup>5</sup> On the other hand Wade, a Radical, felt bound to admit the Southern States provided they ratified the Amendment within a reasonable time.<sup>6</sup> James A. Garfield, a representative from Ohio and not a Radical, took the same ground<sup>7</sup> and Chief Justice Chase wrote in a private letter "Prompt ratification would have assured complete restoration in my judgment."<sup>8</sup> Very important are the words of Senator John Sherman who had a good comprehension of popular sentiment and was careful ordinarily not to advance beyond it. "If the Southern people had accepted, or if they do accept, the

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<sup>1</sup> *Globe*, p. 53.

<sup>2</sup> Dec. 19, *ibid.*, p. 193.

<sup>3</sup> Dec. 20, *ibid.*, p. 216.

<sup>4</sup> Dec. 14, *ibid.*, p. 124.

<sup>5</sup> Jan. 3, 1867, *ibid.*, p. 252.

<sup>6</sup> Dec. 14, 19, *Globe*, pp. 124, 192.

<sup>7</sup> Feb. 8, 12, 1867, *ibid.*, pp. 1104, 1183.

<sup>8</sup> Warden, p. 651.



Constitutional Amendments,"<sup>1</sup> he declared on December 14, 1866 "those States are just as certain to be represented here by senators and members as the State of Ohio or the State of Massachusetts. . . . And if the Southern people would now accept them the people of the United States would hail the acceptance as the most joyful event since the surrender of Lee's army."<sup>2</sup> On a fair consideration of all the elements in the case it may be safely affirmed that a majority of Republicans in Congress were prepared to stand by their virtual offer of the Fourteenth Amendment as a finality.<sup>3</sup>

Although President Johnson was thoroughly discredited at the North, such was the importance and power of his office that he was still able to render the South and the whole nation a valuable service if he could bring his mind to the acceptance of the country's verdict. If he recommended to the Southern States the ratification of the Fourteenth Amendment, they would undoubtedly take his advice and this would be the basis of reconstruction. As I have shown in the previous chapter he was in a position to do this without any sacrifice of principle. It would undoubtedly require a sacrifice of individual opinion, of self-love, but upon this depended an important advantage to the nation. The popular will had been unmistakably manifested in the

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<sup>1</sup> The Fourteenth Amendment only is meant.

<sup>2</sup> *Globe*, p. 128.

<sup>3</sup> See Remarks of Bingham, Jan. 16, 1867, *Globe*, pp. 500, 503; expressions pro and con cited in Pierce's Sumner, vol. iv. p. 312, notes 2, 3. The *Nation*, Dec. 20, 1866 said: "We think that there can be little question that, as a matter of fact, the mass of the party, in Congress and out of it, did understand that when the amendment was proposed its acceptance was the only necessary condition of readmission, and the elections were carried on this understanding in all the Northern States. If this was a misconception, the Radical leaders are to blame for not having spoken out more loudly before the vote. So far as we know, no organ of that wing of the Republican party except the *Independent*, gave the slightest intimation that there was any doubt about the matter." . . . It "looks as if the Senate took Mr. Wade's view rather than Mr. Sumner's."

elections, — and it was the will of the party which had chosen him — and if Johnson could not lend himself to the execution of that mandate he ought to resign. But he was inexorable and his message to Congress of December 3, 1866, was only a rehash of his old ideas, though with a sauce less peppery. Evidently he had learned nothing. The Northern people were weary of his iterated complaint that the Southern States remained unrepresented; by now, indeed, they gave but small heed to anything he said. In the South he had a real influence but this he would not exert in the right direction. During the previous session of Congress he had lost whatever reputation he had possessed for statesmanship. Despite his frequent appeals to the people and his expression of confidence in them he now showed that he was not a true democrat in that he refused to carry out their will, setting up his own opinion against that of the great body of patriotic men who had stood at the back of Lincoln during the Civil War. “If the Democratic party with the President at its head,” said Garfield on February 12, 1867, “had on any day since July last advised the people of the South to accept the Constitutional Amendment [the Fourteenth] and come in as Tennessee did, it would have been done.”<sup>1</sup>

The Southern States broken in fortune and spirit, badly guided by the President and their Democratic friends at the North, did what was natural, under the circumstances, but very unwise. They rejected almost with unanimity the proffered terms. In October 1866, Texas refused to ratify the Fourteenth Amendment and in November Georgia, which as we have seen had been the foremost of the Cotton States in accepting the new order, did likewise. A few men of influence in Georgia, among them ex-Governor Brown, favoured another course, but these were overborne by a coalition of men who formerly differed among themselves in regard to secession

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<sup>1</sup> *Globe*, p. 1183.

before Georgia took the irrevocable step. Herschel V. Johnson, Alexander H. Stephens, Benjamin H. Hill joined with Toombs and Cobb in their opposition to the Amendment. The excellent governor Judge Jenkins and a joint committee of the legislature advised against ratification and this advice was followed by a unanimous vote in the Senate and by a vote of 131 : 2 in the House. December 1866 was a fruitful month for the opposition to the Amendment. Florida led off by a unanimous rejection, Alabama gave but 10 votes for the amendment, North Carolina, 11 and Arkansas, 3. Governor Orr of South Carolina said to his legislature, "Let us preserve our own self-respect and the respect of our posterity by refusing to be the mean instrument of our own shame" in the adoption of such an article as the Fourteenth Amendment. The State followed his advice and rejected it. In January 1867, Virginia gave but one vote for the Amendment and Mississippi rejected it unanimously as did during the following month the last of the ten states, Louisiana.<sup>1</sup>

Most of the states presented in one way or another the reasons for their action. Objection was made to the adoption of a constitutional amendment when ten Southern States were unrepresented in Congress, and also to the menace of a reduced representation, but the most formidable obstacle to ratification lay in the so-called penal section which disfranchised from holding office the political leaders of the South. The Southern people, it was said, were asked to be the instruments of their own dishonour by fastening a stigma upon men who had their sympathy and whom they had followed with pride. The amendment is an "insulting

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<sup>1</sup> McPherson's History of Reconstruction, p. 194. This will be referred to hereafter as McPherson; Appletons' Annual Cyclopædia, 1866, pp. 10, 27, 326, 352, 523, 552, 709, 763-765; Appletons' Annual Cyclopædia, 1867, p. 452; Life of Brown, Fielder, pp. 424, 429; Life of Lamar, Mayes, pp. 145, 160; the *Nation*, Dec. 6, 1866, p. 443.

outrage" declared the governor of Mississippi; it is "a denial of the equal rights of many of our worthiest citizens."<sup>1</sup>

The enumeration of the votes of the Southern legislatures would seem to indicate that they refused, with a single defiant voice, to accept the proffered terms but the votes do not tell the whole story. Two States, Alabama and Virginia, came near ratifying the Fourteenth Amendment and would probably have done so had they not been discouraged by the advice of President Johnson. Although Governor R. M. Patton in his annual message to the Alabama legislature in the autumn had advised against ratification he later changed his mind and on December 7, 1866, sent a special message to both Houses counselling favourable action for the reason that if these terms were rejected the next would be harsher. The message "produced a marked sensation" and that night the party for ratification thought that they should succeed, having apparently the control of the Senate. This was obtained by the argument that otherwise Congress would place Alabama under a territorial government. The contest was severe and presumably to stave off a vote some member or members asked counsel by telegraph from ex-Governor Parsons, who advised emphatically that the amendment be rejected. It was openly asserted that this advice was inspired by Andrew Johnson. "The cry was raised 'we can't desert *our* President'" and on December 7 the legislature gave an overwhelming vote against ratification.<sup>2</sup>

During the Christmas holidays Patton made speeches

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<sup>1</sup> Appletons' Annual Cyclopædia, 1866, p. 520; other authorities *l.c.*; the *Nation*, Dec. 6, 1866, p. 443, Jan. 24, 1867, pp. 70, 76.

<sup>2</sup> Letter of General Wager Swayne of Dec. 10 to S. P. Chase. Chase Diary and Correspondence, p. 516 (Am. Hist. Assn. Rep. 1902, vol. ii.). Appletons' Annual Cyclopædia, 1866, p. 11; McPherson, p. 194. Fleming, Civil War and Reconstruction in Alabama, p. 396. This will be referred to as Fleming. The vote was Senate yeas 2, nays 27; House yeas 8, nays 69.



in northern Alabama in favour of ratification, and sent to the legislature, which assembled in January 1867, a second message recommending the adoption of the Fourteenth Amendment. In the meantime Thaddeus Stevens had introduced into the national House a bill providing for the reconstruction of the ten Southern States on the basis of universal negro suffrage and the disfranchisement of most of the white men.<sup>1</sup> This probably wrought a change of opinion in Parsons and on January 17, 1867 he telegraphed from Montgomery to the President: "Legislature in session. Efforts making to reconsider vote on constitutional amendment. Report from Washington says it is probable an enabling act will pass." By "enabling act" was undoubtedly meant Stevens's bill or something similar to it. Promptly came Johnson's reply: "What possible good can be obtained by reconsidering the constitutional amendment? I know of none in the present posture of affairs; and I do not believe the people of the whole country will sustain any set of individuals in attempts to change the whole character of our Government by enabling acts or otherwise."<sup>2</sup> The rest of his despatch may be thus abbreviated, "There should be no faltering" in the sustainment of "my policy." Thus one promising attempt in Alabama to ratify the Fourteenth Amendment was defeated by the indirect interposition of the President and a second by his express injunction.

The evidence in regard to Virginia is not so precise resting as it does on the recollections of General Schofield. He was in command of the Department of Virginia and urged in a full discussion with the leading members of her legislature the ratification of the Fourteenth Amendment to save her from "the more radical reconstruction" threatened by Congress. Visiting

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<sup>1</sup> Introduced Dec. 19, 1866, read Jan. 3, 1867, *Globe*, pp. 209, 250.

<sup>2</sup> McPherson, p. 352; *Globe Supplement*, Trial of the President, p. 90; Fleming, p. 397.

Washington he obtained the assurance "from leading Republicans in Congress, so far as it was in their power to give it," that if the Amendment should be ratified, Congress would recognize the existing government of Virginia and she would be restored to the Union with the full privileges of a State. It seemed to the General on his return to Richmond that the Amendment would be at once ratified; "but other influences, understood to come from some source in Washington (probably President Johnson) finally prevailed" and on January 9, 1867, the Virginia Senate rejected it unanimously and the House with only one dissenting voice.<sup>1</sup>

Movements in States are catching. Had Alabama and Virginia ratified the amendment the others would probably have done likewise.<sup>2</sup> This would have been certain had General Lee and Wade Hampton raised their powerful voices in favour of such a policy. Yet had the Southern States taken such action Stevens,<sup>3</sup> Sumner<sup>4</sup> and their followers would have strenuously opposed in Congress such a settlement, but they could not, in my opinion, have carried with them a majority of their party.

With negro suffrage looming up Johnson and the Northern Democrats displayed a lack of prescience in their advice to the South. Blaine's interpretation of the elections and Stevens's bill pointed out what was coming. Still more significant was the action of Congress early in the session extending the suffrage to the negroes in the District of Columbia. In the consideration of this measure the Republicans abandoned the doctrine of impartial for that of universal suffrage, voting down almost in a body in the Senate an amendment providing

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<sup>1</sup> Schofield's *Forty-six Years*, p. 394; McPherson, p. 194; Eckenrode, *Virginia during Reconstruction*, p. 51.

<sup>2</sup> See article of Johnston, *Suffrage and Reconstruction in Mississippi*. *Miss. Hist. Soc. Pub.*, vol. vi. pp. 156, 159, 160, 163, 164, 170.

<sup>3</sup> Feb. 13, 1867, *Globe*, p. 1214.

<sup>4</sup> Pierce's *Sumner*, vol. iv. p. 312.

for an educational qualification and refusing to consider such an one in the House.<sup>1</sup> All talk of restricting the franchise to "the very intelligent" coloured men and to those who had "fought gallantly in our ranks" as Lincoln had suggested was dropped. Negro suffrage meant that every black man in the former Confederate States should have a vote; and the very idea of enfranchising such a mass of ignorance and inexperience should have caused Johnson and the Northern Democrats to shudder and to counsel the South in the words of ex-Governor Brown, "Agree with thine adversary quickly."<sup>2</sup> It is bootless to attempt to fathom the designs of the Northern Democrats. They had begun to hope that with the electoral votes of the Southern States they might elect the President in 1868<sup>3</sup> and they may have thought that the programme of negro suffrage would cost the Republicans a considerable portion of their support at the North, but they would have found it difficult to explain how the late Confederate States were going to get back into the Union and cast their electoral votes without the consent of a Congress which the Republicans dominated by a two-thirds majority. The next Congress, for which the House was elected in the autumn of 1866, was certain to be more radical than the present one and a law had been passed that it should assemble on March 4 directly on the termination of the actual session.<sup>4</sup> The design was to have a continuous session if necessary to watch the President. The President himself may have still hoped for a compromise with the party which elected him. A large

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<sup>1</sup> This bill passed the Senate Dec. 13, the House Dec. 14, but was not presented for the President's approval until Dec. 26; was enacted over the President's veto, by the Senate, Jan. 7, the House, Jan. 8, 1867.

<sup>2</sup> Life of Brown, Fielder, p. 429.

<sup>3</sup> Letter of John Jay, Jan. 5, 1867, Diary and Correspondence, S. P. Chase, p. 519.

<sup>4</sup> Passed by the House Dec. 10, Senate Jan. 10, 1867. Approved Jan. 22.

number of conservative Republicans made an attempt to stay the continued progress of the Radicals by seeking common ground on which they might stand with him but "the precipitation of events," so it was said, destroyed any chance of success the movement may ever have had.<sup>1</sup> If Johnson agreed to the compromise which was published<sup>2</sup> and which was the Fourteenth Amendment in somewhat different phraseology, plus a declaration of his pet theory that the Confederate States had not been out of the Union and a proposition for qualified negro suffrage,<sup>3</sup> his infatuation during the previous session is the more reprehensible as showing what I have continually maintained that his difference with Congress was based on no vital principle.

"The indications are that we shall have an easy-going session" wrote Senator Grimes on December 5, 1866 to his wife. I think that it will be the policy of Congress to let "the President severely alone."<sup>4</sup> The prediction of this hard-working senator was in no way fulfilled. Under the persistence of Stevens and Sumner, radical ideas developed continually and their propaganda was helped by the course of events. Three decisions of the United States Supreme Court tended to the solidarity of Congress; senators and representatives thought that they might have to array themselves against the judicial as well as the executive department of the government or sacrifice the results of the war. On December 17, 1866, the opinion of the Court was handed down in the Milligan case, the majority affirming [the Court stood 5:4] that neither the President nor

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<sup>1</sup> *Globe*, p. 1580, also pp. 1104, 1122.

<sup>2</sup> McPherson, p. 258; Appletons' Annual Cyclopædia, 1867, pp. 15, 546. Certain corrections interlined in Johnson's hand to various drafts of amendments and some telegraphic correspondence between Washington and Raleigh, which are among Johnson's private papers in the Library of Congress, indicate his approval of this compromise.

<sup>3</sup> Governor Orr's speech, New York *Times*, Feb. 23, 1867.

<sup>4</sup> Life of Grimes, Salter, p. 308.



Congress had the power to declare martial law and to authorize the trial of citizens by military tribunals where the civil courts were open.<sup>1</sup> Stevens said in the House, "That decision, although in terms perhaps not as infamous as the Dred Scott decision, is yet far more dangerous in its operation upon the lives and liberties of the loyal men of this country."<sup>2</sup> There was talk of impeaching the judges<sup>3</sup> and, before the excitement about the opinion in the Milligan case had subsided, two more decisions were rendered which exasperated the Radicals afresh as being an additional attack on their projected policy. The Court, again by 5:4, held that "a state and a federal test oath designed to exclude rebels from exercising the functions of clergyman and attorney respectively were unconstitutional as *ex post facto* laws."<sup>4</sup> A bill was introduced into the House requiring a unanimous decision of the Court in cases involving the validity of an act of Congress;<sup>5</sup> and while during this session it was not taken up for consideration it is an evidence of the bitter feeling in the legislative halls towards the majority of the Supreme judges. More significant still were the words of John A. Bingham, a conservative Republican, which indeed were uttered in the House in a speech opposing Stevens's policy. If it be apprehended, he said, that the Supreme Court purposes to intervene wrongfully to defeat the will of Congress, let us "sweep away at once their appellate jurisdiction in all cases"; still further if the Court by virtue of its original jurisdiction "usurps power to decide political questions and defy a free people's will" we may through a constitutional amend-

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<sup>1</sup> See vol. iv. p. 248.

<sup>2</sup> Jan. 3, 1867, *Globe*, p. 251.

<sup>3</sup> *The Nation*, Jan. 10, 1867, p. 21.

<sup>4</sup> Essays on the Civil War and Reconstruction, Dunning, p. 121; *The Nation*, Jan. 17, 1867, p. 41. These opinions were handed down Jan. 14, 1867.

<sup>5</sup> The Impeachment of A. Johnson, Dewitt, p. 136; Jan. 21, *Globe*, p. 616.

ment "defy judicial usurpation" by "the abolition of the tribunal itself."<sup>1</sup>

What was paramount in causing Congress to be thrown into the hands of the Radicals was the almost unanimous rejection of the Fourteenth Amendment by the Southern States. That action disappointed the Conservatives and exasperated the main body of Republicans, who still had open minds, but it gave great joy to the Radicals. Knowing that seven States had rejected the amendment the senators and representatives came together after the holidays in a different temper from that in which they had begun the session. In his speech of February 8, Garfield expressed the sentiment of the main body who were gradually being influenced to a determination to follow the radical leaders. "The last one of the sinful ten," he said, "has at last with contempt and scorn flung back into our teeth the magnanimous offer of a generous nation. It is now our turn to act."<sup>2</sup>

On the first day of the session after the holidays [January 3, 1867] Stevens called up his bill to provide for valid governments in the ten States on the basis of negro suffrage and white disfranchisement.<sup>3</sup> This was a substitute for the bill of the Joint Committee on Reconstruction, reported at the previous session, which offered in set terms the Fourteenth Amendment to the Southern States as the sole further condition of their restoration to their former rights and privileges, and it engaged the attention of the House for several weeks. Bingham speaking for a number of Conservatives made a plea that Congress stand by the Fourteenth Amendment and give the Southern States more time for its

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<sup>1</sup> Jan. 16, 1867, *Globe*, p. 502; Dunning, p. 121. Bingham's remarks referred to a supposed future action of the Supreme Court against the Fourteenth Amendment. See Boutwell's attack on the five judges, *Globe*, p. 647.

<sup>2</sup> *Globe*, p. 1104.

<sup>3</sup> *Ibid.*, p. 250.

consideration. "There is something grander in magnanimity and mercy," he said, "than there is in stern, relentless, even-handed justice."<sup>1</sup> It might have been expected that these noble words would sway Congress. The North could afford to be generous. The Fourteenth Amendment plan had been worked out by an able committee after long deliberation and with great care and it bore the marks of constructive genius.<sup>2</sup> Congress adopted it, the people by an overwhelming voice had approved it. The Southern States it is true had refused to accept it but they were misguided and the knowledge of who had misguided them was in the possession of Congress.<sup>3</sup> Nearly every representative and senator knew the words,

"The quality of mercy is not strain'd ;

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It blesseth him that gives and him that takes :

'Tis mightiest in the mightiest,"

and they had the opportunity of crystallizing these words into action which should make for their eternal glory.

Despite the irritation caused by the rejection of the Amendment by the Southern States such were the differences which cropped out when the details of any measure were considered, that no further act of reconstruction would probably have been passed at this session had it not been for the able and despotic parliamentary leadership of Stevens. The old man's<sup>4</sup> energy was astonishing. Vindictiveness seemed to animate his frame. Already bitter enough in his personal antagonism to Johnson and the Southern people he added to this bitterness by frequent consultations with those whom he termed "loyal men from the South"<sup>5</sup> who hated "the natural leaders of opinion" the men of

<sup>1</sup> *Globe*, p. 504.

<sup>2</sup> *Globe*, p. 1183 ; Blaine, vol. ii. p. 249.

<sup>3</sup> Vol. v. p. 598.

<sup>4</sup> He was nearly seventy-five.

<sup>5</sup> *Globe*, p. 1214.

“brain experience and education”<sup>1</sup> in their section and who aimed at supplanting them in political influence and power.

The original bill and Stevens's substitute were re-committed to the Joint Committee on Reconstruction which was composed of the same senators and representatives as at the last session. During two meetings the committee considered the subject and agreed, with the consent of all the Republicans but one, on a bill which Stevens was ordered to report to the House.<sup>2</sup> This he did on February 6. The bill set aside “the pretended State governments” in the ten late so-called Confederate States<sup>3</sup> and placed them under military rule, dividing them into five military districts over each of which the General of the Army [Grant] should place a commandant. The commandant should preserve peace and maintain order. He might use the legal tribunals if he found them competent but they were to be considered of no validity *per se*. The reason for this proposed legislation was given by Stevens the day after his introduction of the bill. “For two years,” he said, the Southern States “have been in a state of anarchy; for two years the loyal people of those ten States have endured all the horrors of the worst anarchy of any country. Persecution, exile and murder have been the order of the day within all these Territories so far as loyal men were concerned, whether white or black, and more especially if they happened to be black. We have seen the best men, those who stood by the flag of the Union, driven from their homes and compelled to live on the cold charity of a cold North. We have seen

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<sup>1</sup> John A. Andrew, see vol. v. p. 607.

<sup>2</sup> Feb. 2, 6, 1867, Journal. Bingham, who in committee still laboured for the Fourteenth Amendment plan, was undoubtedly the dissident. *Globe*, p. 1214.

<sup>3</sup> The governments which had been instituted under the Reconstruction plan of Johnson.



their loyal men flitting about everywhere, through your cities, around your doors, melancholy, depressed, haggard, like the ghosts of the unburied dead on this side of the river Styx, and yet we have borne it with exemplary patience. We have been enjoying our 'ease in our inns'; and while we were praising the rebel South and asking in piteous terms for mercy for that people, we have been deaf to the groans, the agony, the dying groans which have been borne to us by every Southern breeze from dying and murdered victims."<sup>1</sup> Stevens pressed the measure. The subject of reconstruction had been sufficiently discussed. Immediate action was needed. "To-morrow, God willing," he said, "I will demand the vote."

Bingham opposed the bill unless it could be improved; other Republicans objected to it and argued in favour of delay. John A. Griswold, an enterprising manufacturer and liberal business man from Troy, New York, preferred to stand by the Fourteenth Amendment, to wait for "the development of events" rather than to take "a step in the wrong direction" and to give "those States further opportunity to exhibit a spirit of obedience and loyalty."<sup>2</sup> Griswold's remarks were made on February 8, the day on which the vote was expected. Stevens called for the previous question and in his endeavour to carry the House taunted those who opposed his bill with having been convinced by the arguments of the President. But the House refused to second the previous question and the debate went on.

Among others, Bingham and Blaine offered each an amendment to the bill but Stevens would not allow them to be voted on; finally these two were fused into one which added a section to Stevens's bill providing a termination to the military rule by the reconstruction of

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<sup>1</sup> Feb. 7, *Globe*, p. 1076.

<sup>2</sup> *Globe*, p. 1101, *ante et seq.*; for an interesting resumé of the debate see Blaine, vol. ii. p. 251.

the late Confederate States with universal suffrage, the negroes having the right to vote, and there being no disfranchisement practically of the whites. Blaine moved that the bill be referred to the Committee on the Judiciary with instructions to report it back immediately with the Bingham-Blaine amendment. This motion was voted down by 94:69 [February 13]. Before this vote was taken Stevens apparently sure of success made the closing speech. I have no respect for the Fourteenth Amendment, he declared. He vented the whole power of his sarcasm on Bingham; he called the Bingham-Blaine Amendment a "proposed step toward universal amnesty and universal Andy-Johnsonism"; it "lets in a vast number of rebels and shuts out nobody." He intimated that the ex-Confederates were "great criminals" whose crimes were "unrepented" and seemed also to imply that they were "vagabonds and thieves." The Republican members who urged mercy were "hugging and caressing those whose hands are red and whose garments are dripping with the blood of our and their murdered kindred." He demanded the previous question and his bill passed without amendment<sup>1</sup> by 109:55 [February 13]. On the announcement of the vote, he said exultantly, "I wish to inquire, Mr. Speaker, if it is in order for me now to say that we indorse the language of good old Laertes that Heaven rules as yet and there are gods above?"<sup>2</sup>

Stevens carried this bill through an unwilling House; a strong minority of his own party was opposed to it largely for the reason that pure military rule without any provision for its termination was unpalatable. He obtained his majority by sarcasm, taunts, dragooning and by cracking the party whip. There had been no such scene in Congress since Douglas carried his Kansas-Nebraska bill through the Senate. Bingham, a veteran,

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<sup>1</sup> There were some amendments in matters of detail but no one of consequence.

<sup>2</sup> *Globe*, pp. 1214, 1215.

Blaine, very adroit for a member serving his second term only, were unable to cope with the leader; both voted with him on the passage of the bill. Only ten Republicans were counted with the noes although the names of a number are recorded in the list of "not voting."<sup>1</sup>

The bill passed the House February 13. This second session of the Thirty-ninth Congress was to expire by law March 4. Haste was necessary if a Reconstruction law was to be enacted before adjournment. On February 13, the first reading of the bill was had in the Senate, where it had already appeared as a project of Senator Williams of Oregon. Eleven days previously he had introduced it into the Senate; it was referred to the Joint Committee on Reconstruction which after amendment ordered Stevens to report it to the House.<sup>2</sup> Now Williams seeking to improve his own measure gave notice [February 14] that he should offer the Bingham-Blaine Amendment, but on the next day concluded not to do so as he had been persuaded that any amendment would endanger the passage of the bill. Whereupon Reverdy Johnson offered it and discussion went on during a large part of the day and an evening session, which lasted until three o'clock the next morning.

It then became apparent from the many differences that if the debate continued, no agreement would be reached by the majority and resort was therefore had to a party caucus. At eleven o'clock on the morning of Saturday February 16 the Republican senators met and appointed a committee of seven consisting of Sherman, Fessenden, Trumbull, Sumner, Howard, Frelinghuysen and Howe<sup>3</sup> to see if the various propositions might be reconciled and a bill drawn which the caucus would accept. All the members of the committee agreed on universal negro suffrage for the election of delegates to the Conventions which should in the several States

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<sup>1</sup> *Globe*, p. 1215; Blaine, vol. ii. p. 257.

<sup>2</sup> *Globe*, p. 975; Journal of the Committee.

<sup>3</sup> Or Harris.

begin again the work of reconstruction by framing new constitutions; but they differed whether the bill should require these Conventions to insert universal negro suffrage in their constitutions. Sumner argued for such a provision while Fessenden maintained that it was unnecessary as unqualified suffrage for the coloured man was secured in the original voting and moreover the constitutions must be submitted finally to Congress for approval. Only one senator on the committee sustained Sumner; but when the bill agreed upon in the committee was reported to the caucus he urged his point again and secured its adoption by 17 ayes to 15 noes.<sup>1</sup>

During the day and evening session of the Senate, on Saturday February 16, debate on the subject went on. At about midnight Sherman introduced the caucus bill as a substitute. The first four sections of it were substantially the military bill of Stevens except that the President instead of the General of the Army should assign the commandants to the different districts; for it was deemed beyond the sphere of Congress to deprive the President of his constitutional power of commander-in-chief. The fifth section of it was substantially the Bingham-Blaine Amendment which had been voted down in the House. At a little after six o'clock on Sunday morning [February 17] the caucus bill passed the Senate by a vote of 27 : 4.<sup>2</sup>

On Monday the House took it up. The Radicals characterized the bill as making universal suffrage and universal amnesty the basis of reconstruction. This was in a measure true. Every male citizen without

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<sup>1</sup> See the debate in the Senate Feb. 10, 1870, *Globe*, p. 1177 *et seq.*; Pierce's Sumner, vol. iv. pp. 313, 320; Sumner's Works, vol. xi. p. 104, vol. xiii. pp. 304, 328. I have followed Sherman's and Stewart's account rather than Sumner's and E. L. Pierce's. The former fits into the situation and is confirmed by the only contemporaneous evidence I have used, Sumner to Bright, May 27, Pierce, p. 320. Sumner's failure to contradict categorically Sherman and Stewart in the debate of Feb. 1870 adds weight to my account.

<sup>2</sup> *Globe*, pp. 1459, 1469.



regard to race or colour could vote. No white man was disfranchised for "treason and rebellion," but, as the ratification of the Fourteenth Amendment was a part of the bill, the penal section of the Amendment disfranchising the leaders from office still held. The Radicals objected that these leaders should have even the right of voting. "Why," asked Stevens, "is it that we are so anxious to proclaim universal amnesty?" He objected also to the management of these ten States being placed in the hands of the President instead of General Grant. Nor did he believe that this Congress should attempt a plan of reconstruction: that should be left to the future Congress which would have the necessary time for deliberation and for the perfecting of a measure. He had proposed simply a "police regulation" which was urgent in view of the "anarchy and oppression" which existed at the South. Blaine and Bingham argued for the adoption of the Senate bill but Stevens again defeated them, carrying with him 98 noes to 73 ayes. It was a hard-earned victory and effected only by the aid of the Democrats, with "a minority of extreme Republicans." The conservative Republicans and some of the Radicals followed Bingham and Blaine.<sup>1</sup> After the House refused to concur in the amendments of the Senate, Stevens's motion for a committee of conference prevailed. The next day [February 19], however, the Senate after considerable debate insisted on its bill, thereby refusing for the moment the request for a conference from the House.<sup>2</sup>

But thirteen days of the session remained and it looked as if Reconstruction would go over to the next Congress. Compromisers, however, went busily to work and in the end agreed on some modifications which secured the party vote in both the Senate and the

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<sup>1</sup> *Globe*, pp. 1315-1340; Blaine, vol. ii. p. 260; *The Nation*, Feb. 21, p. 141.

<sup>2</sup> *Globe*, pp. 1555-1570.

House. The first House amendment was offered [February 19] by Wilson of Iowa, chairman of the Judiciary Committee: this provided that those excluded from office by the Fourteenth Amendment could not vote at the elections for delegates to the conventions nor be members of these bodies. Blaine now had charge of the Senate bill, to the fifth section of which was tacked on the Wilson Amendment and he endeavoured to bring it to a vote. The Democrats filibustered and Stevens aided them by remaining a quiet onlooker and in one case at least voting with them on a dilatory motion;<sup>1</sup> the bill went over perforce to the next day. Then [February 20] Shellabarger offered an amendment to Wilson's of a nature to make the measure more stringent from the radical point of view: this, making a sixth section of the bill, was adopted by 99 : 70 and the Senate bill with Wilson's Amendment was then passed by 126 : 46. Stevens, believing probably that he had obtained the most drastic measure possible, voted "aye" on both these propositions.<sup>2</sup> On February 20 the Senate after some debate passed the amended bill by 35 : 7, the Republicans and Reverdy Johnson voting in the affirmative.<sup>3</sup>

The President vetoed the bill sending his message to the House on March 2 and on the same day the House and the Senate passed it over his veto, the result in both cases being greeted with applause.<sup>4</sup>

The Reconstruction Act of March 2 provided no machinery for putting it in operation. The Fortieth Congress, which assembled March 4 immediately on the adjournment of the Thirty-ninth, at once set to work to supply this omission, passing over the President's veto what is known as the Supplemental Reconstruction Act of March 23. These two laws, together with the Act

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<sup>1</sup> *Globe*, pp. 1356-1358 ; *The Nation*, Feb. 28, p. 161.

<sup>2</sup> *Globe*, pp. 1399, 1400.

<sup>3</sup> *Globe*, pp. 1625-1645.

<sup>4</sup> *Ibid.*, pp. 1729-1733, 1969-1976.

interpreting them passed July 19, 1867, are the Congressional scheme of reconstruction which has been well denominated "Thorough."<sup>1</sup> The preamble of the Act of March 2 stated that "no legal State governments or adequate protection for life or property" existed "in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas and Arkansas"; therefore to enforce "peace and good order" those States were divided into five military districts and it was made the duty of the President to assign to the command of each of them an officer of the Army, "not below the rank of brigadier general," who should be furnished "a sufficient military force" "to enforce his authority." This general should protect life and property, "suppress disorder and violence" and punish all disturbers of the public peace; he could at his discretion "allow local civil tribunals" to try offenders or he could organize military commissions for that purpose. No State officer could interfere with the exercise of this military authority. Section 4 provided some mitigating limitations on martial rule. Thus far the act was based on Stevens's military bill and showed its essential features. The fifth section, being, except the last clause, substantially the Bingham-Blaine Amendment, provided for the elections in these ten States of conventions to frame constitutions. All male citizens "of whatever race, colour or previous condition" should have the right to vote for delegates "except such as may be disfranchised for participation in the rebellion." These State constitutions must provide for universal negro suffrage, be ratified by a popular vote and approved by Congress. When the resultant legislature of any one of those States should have adopted the Fourteenth Amendment and when that Amendment should have become part of the Constitu-

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<sup>1</sup> They are printed in McPherson, pp. 191, 192, 335.

tion of the United States, the senators and representatives of that State, on their taking the iron-clad oath,<sup>1</sup> should be admitted to Congress: then military rule therein should cease. The last clause of the fifth section was the Wilson Amendment.<sup>2</sup> Section 6, the Shellabarger Amendment, declared that the existing civil governments in these ten States should be "deemed provisional only" and "in all respects subject to the paramount authority of the United States."

The Act of March 23 directed the commanding general in each district to cause a registration of voters to be made; it provided for certain details of the registration and the elections and also the mode in which the proceedings should be transmitted to Congress. It disfranchised an additional number of white men. No one could register unless he took an oath, "that I have not been disfranchised for participation in any rebellion or civil war against the United States." It further extended the disfranchisement of the Wilson Amendment. That provision prevented "the natural leaders of opinion in the South" from voting at the elections for delegates to the conventions but permitted them to vote on the ratification of the constitutions:<sup>3</sup> by the Act of March 23 they were deprived of this privilege as well. The Act also provided that the registration and election officers must take the iron-clad oath.

No law<sup>4</sup> so unjust in its policy, so direful in its results had passed the American Congress since the Kansas-Nebraska Act of 1854. The avowed reason for it was that a state of anarchy existed at the South, that under the existing governments the lives of "loyal" white men and negroes were not protected. "Southern outrages" was a potent argument at this session and

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<sup>1</sup> See vol. v. p. 541, note 1.

<sup>2</sup> *Ante*.

<sup>3</sup> See the colloquy between Sherman and Grimes, *Globe*, p. 1625.

<sup>4</sup> In this discussion of the subject I count the two acts of March 2 and March 23, 1867, as one.



was destined for many years to remain in politics. Stevens's declarations are entitled to no credence. He hated the South and desired to crystallize his feeling of hatred into legislation. He sought evidence and twisted facts to support his argument that the South was "bleeding at every pore,"<sup>1</sup> for if he could drive that home, he might convince his brother Republicans that "Thorough" was the only policy adapted to the situation. Stevens was a clever advocate. If the truth would serve him, so much the better; but if not, specious tales would answer and for those he went to Southern refugees who for a variety of reasons were for the most part untrustworthy witnesses. Sumner, again, though sincere in his advocacy, was so thoroughly pledged to the cause of the negroes that he could believe any plausible stories of cruelties wherein they were the victims, whilst he had no pity for the vanquished Southerners. He had begun his public career by espousing the cause of the slave and his ear was always open to the wrongs of coloured people but sometimes deaf to injustice towards those of his own race.<sup>2</sup>

But the fact of Southern outrages does not rest on

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<sup>1</sup> *Globe*, p. 1213.

<sup>2</sup> An anecdote illustrating this was told me by Senator Bradbury of Maine whose term in the Senate was ending as Sumner's was beginning. One day when the Senate was devoting its attention to private claims, one in favour of a certain woman came up and as no one spoke for it, it was at once disposed of adversely. When it was announced that the noes had it Bradbury chancing to look up to the gallery noticed that a woman had fainted. Struck with this occurrence he made a cursory examination of the claim and sent a page to the gallery to request the woman, when she should recover, to come to the ante-room. She came and by request of Bradbury explained to him the nature of her claim, on which she had waited long for action; this adverse vote would practically deprive her of the means of livelihood. Bradbury then inquired, where was her home? "Eastern Massachusetts" was the reply. "But why didn't you go to Mr. Sumner and ask him to take charge of your case?" "Oh, sir, I did, but really, sir, Mr. Sumner takes no interest in claims unless they be from black people." I will say in sequel that Bradbury became convinced that the poor woman's claim was just and, using his influence, got the Senate to reconsider it and pass it. It had passed the House or did pass it shortly thereafter.

Stevens's and Sumner's assertions. Senator Sherman who had still considerable sympathy with the defeated Southerners, said that it was an "acknowledged fact that the loyal people of the Southern States, whites and blacks, are not protected in their rights but that an unusual and extraordinary number of cases occur of violence and murder and wrong."<sup>1</sup> Senator Williams read a letter from General Custer saying that in Texas there had been five hundred indictments for murder against "disloyal men" and not a single conviction.<sup>2</sup> General George H. Thomas testified that "Offences against freedmen and Union men occur quite frequently"; and "I do not believe there is much chance of convicting a resident or citizen of Georgia for murder if the victim was a Union man or a negro."<sup>3</sup> Senator Wilson said, "Since the passage of the civil rights law [April 1866] 375 murders of freedmen have been committed in the rebel States and 556 outrages": these cases had been officially reported, and did not include the Memphis riot and New Orleans massacre. It was moreover generally admitted, so Wilson affirmed, that the actual number was much greater.<sup>4</sup>

The subject was approached by the Radicals with the desire to find facts to bolster up the policy which they had determined on rather than to get at the exact truth; the growth of the belief in the outrages and in the necessity for federal protection of the negroes is plainly discernible as the session wore on. Naturally the trouble was exaggerated. From the report of General Howard the head of the Freedmen's Bureau, [November 1, 1866] isolated facts might be drawn to support a policy of stern repression by military force, but a

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<sup>1</sup> Feb. 16, *Globe*, p. 1462. See Allison, *Globe*, p. 1181; *The Nation*, Jan. 31, pp. 82, 83; Feb. 14, p. 130; Feb. 21, p. 142; Feb. 28, p. 170.

<sup>2</sup> *Globe*, p. 1567.

<sup>3</sup> Jan. 28, 1867. House Reports, No. 23, 39th Cong. 2d Sess.

<sup>4</sup> *Globe*, p. 1375.

careful analysis of the report, made with due regard to the times and localities, would have justified a hopeful view of the situation at the South.<sup>1</sup> It is moreover an important fact that there were no repetitions of such occurrences as the Memphis riot and New Orleans massacre.<sup>2</sup> The trend of legislation in the Southern States was distinctly favourable to the negro. The laws of Mississippi passed in 1865 had been particularly harsh but her legislature, which assembled in October 1866, heard these words from her Governor, Humphreys, "Now that the negro has shown a confiding and friendly disposition toward the white race and a desire to engage in the pursuit of honest labor, justice and honor demand of us full protection to his person and property, real and personal." The legislature acted in this spirit, repealed the severe provisions of the Acts of 1865 and accorded the negroes pretty nearly full civil rights.<sup>3</sup> South Carolina repealed most of her discriminating features and passed substantially the Georgia Act giving the negroes rights of person and property.<sup>4</sup> Nearly all the other Southern States did likewise.<sup>5</sup> Georgia had already, as we have seen, given the negroes civil rights<sup>6</sup> and now, taking a step in advance, recognized the Freedmen's Bureau by making valid all contracts of apprenticeship entered into with its agents.<sup>7</sup>

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<sup>1</sup> *The Nation* (Dec. 6, 1866, p. 443) summed it up thus, "Outrages, though by no means wholly repressed, are not so numerous as they were a year ago." See House Ex. Doc. No. 1 (vol. iii.) 39th Cong. 2d Sess. pp. 717, 718, 726, 733, 735, 737, 738, 739, 740, 743, 744, 746, 747, 749; Fleming, pp. 368, 369, 385, 399, 406.

<sup>2</sup> See vol. v. pp. 611-614.

<sup>3</sup> *Life of Lamar*, Mayes, p. 159; Acts of Feb. 13, 21, 1867, chap. clxiii. clxx. cexlv.

<sup>4</sup> Acts of Sept. 19, 21, Dec. 21, 1866. Statutes at Large, xiii. 377, 387, 393, 405.

<sup>5</sup> Virginia, Act of April 20, 1867, chap. lxvi.; North Carolina, Act of Jan. 26, 1867, chap. vi.; Alabama, Dec. 7, 1866, Feb. 15, 1867, Nos. 122, 147. The legislation in Florida and Arkansas was similar.

<sup>6</sup> Vol. v. p. 561.

<sup>7</sup> Act of Dec. 8, 1866, No. 195. All marriages of coloured people by coloured ministers were legalized, No. 222.

The assumption that the President was very delinquent in the enforcement of the Freedmen's Bureau and Civil Rights Acts was incorrect although it was apparently shared by Fessenden and Trumbull.<sup>1</sup> Johnson was earnest in his desire that the negroes should be properly treated. He telegraphed to the Governor of Texas, "Make all laws involving civil rights as complete as possible so as to extend equal and exact justice to all persons without regard to color."<sup>2</sup> According to a letter from Stanton the Secretary of War, the Civil Rights law was well enforced;<sup>3</sup> and from the nature of the case this is what was to be expected. All the members of Johnson's cabinet were men of note from the North, all but Stanbery [Attorney-General] had been good Republicans and no one of them would countenance an unfaithful execution of the Freedmen's Bureau or Civil Rights Acts. Stanbery was an excellent lawyer with the professional respect for the law on the statute-book and Stanton was a watch-dog in the radical interest.

Considering the immense revolution, the large number of idle soldiers and guerillas, many of whom were lawless, the sparsely settled country in which there had always been a lax administration of the law, and the great fact of all, this mass of black men suddenly freed from the restraint of slavery — considering all these facts, and also the quarrel between the President and Congress, and the distress arising from the short crops of 1866, things at the South were going on pretty well. It was a triune government: the state governments were based on the consent of the people of character, intelligence and property; the Freedmen's Bureau guarded when necessary the rights of the negroes; and the military occupation was a restraint on any inclina-

<sup>1</sup> *Globe*, pp. 1556, 1562.

<sup>2</sup> Oct. 30, 1866. Appletons' Annual Cyclopædia, 1866, p. 743.

<sup>3</sup> Sen. Ex. Doc. No. 29, 39th Cong. 2d Sess., p. 12; *Globe*, p. 1565.



tion to do great injustice in the administration of the law. Intolerable as a permanent rule, this operated fairly well in this period of transition. It may be affirmed with confidence that there was nothing in the condition of the South which required the stringent military rule provided for in the Reconstruction Acts. The proper remedy for the disturbances which existed was to place the burden of responsibility upon the Southern people who had "fought, toiled, endured and persevered with a courage, a unanimity and a persistency not outdone by any people in any Revolution." This was the Governor Andrew policy. "Why not try the natural leaders of opinion in the South?" he had asked. "They are the most hopeful subjects to deal with in the very nature of the case. They have the brain and the experience and the education to enable them to understand the exigencies of the present situation. They have the courage, as well as the skill, to lead the people in the direction their judgments point, in spite of their own and the popular prejudice."<sup>1</sup> What an indorsement of Andrew's liberal policy were the words of Governor Orr of South Carolina in a speech to the freedmen. "I intend," he said, "that those who attempt to outrage or oppress you shall have the laws enforced against them." He commended their schools. He told of an amendment which had been proposed to the North Carolina constitution, allowing every coloured man the right of voting who could read and write or who had property worth \$250. Influential men in North Carolina, Alabama, Florida, Mississippi, Texas and Arkansas favoured such a programme and it had received his own indorsement. "I am prepared," he said, "to stand by the colored man who is able to read the Declaration of Independence and the Constitution of the United States. I am prepared to give the colored man the privilege of

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<sup>1</sup> Life of Andrew, Pearson, vol. ii. pp. 280, 281 ; see my vol. v. p. 607.

going to the ballot-box and vote.”<sup>1</sup> Now that the Southern people were rid of the incubus of slavery their moral standards were the same as those at the North; and they felt that they were amenable to the public opinion of the enlightened world.

The worst feature about the Reconstruction Acts was not the military government. Honest government by American soldiers would have been better than negro rule forced on the South at the point of the bayonet, which was the actual result of this legislation. How little this result was at the outset foreseen is evidenced by the fact, that in the first instance negro suffrage was grafted on the military bill by the conservative Republicans and resisted by Stevens. Not that there was any motive of mercy behind Stevens's action. He desired that the Thirty-ninth Congress should pass the military bill and the more radical Fortieth Congress deliberate on Reconstruction. He wished the “rebels” disfranchised and the reorganization of the State governments by the “loyal” white men and negroes; and he had a further project of extensive confiscation. “Sir,” he said, “as far as I can ascertain more than \$2,000,000,000 of property belonging to the United States, confiscated not as rebel but as enemy's property has been given back to enrich traitors. Our friends whose houses have been laid in ashes, whose farms have been robbed, whose cattle have been taken from them, are to suffer poverty and persecution, while Wade Hampton and his black horse cavalry are to revel in their wealth and traitors along the Mississippi Valley are to enjoy their manors. Sir, God helping me and I live, there shall be a question propounded to this House and to this nation whether a portion of the debt shall not be paid by the confiscated property of the rebels.”<sup>2</sup> Sumner thought the Recon-

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<sup>1</sup> This speech was made Feb. 14, 1867, reported in the *Charleston Courier* the next day and copied by the *New York Times*, Feb. 23. It was referred to in *The Nation* of Feb. 28.

<sup>2</sup> Feb. 18, 1867, *Globe*, p. 1317.

struction bill as it passed the Senate [February 16] had "fatal defects." "It is not enough to say that rebels *may be* disfranchised," he declared, "you must say that they *must be* disfranchised."<sup>1</sup> In the Fortieth Congress he offered a series of resolutions declaring that "certain further guarantees [were] required in the reconstruction of the rebel States" and among them was that a "homestead must be secured to the freedman so that at least every head of a family may have a piece of land."<sup>2</sup>

The growth of radical ideas since the beginning of the last session of the Thirty-ninth Congress was remarkable. In December 1866 a majority of the Republicans were for sticking to the Fourteenth Amendment as a final condition of reconstruction. When the senators and representatives assembled after the holidays the majority did not favour the imposition of negro suffrage on the South by military force, yet, on March 2, 1867, two-thirds of Congress passed the "Thorough" bill over the President's veto. The rejection of the Fourteenth Amendment by the South, the clever use of the "outrages" argument, the animosity to the President on account of his policy, which was increased to virulence by his wholesale removals of Republicans from office, enabled the partisan tyranny of Stevens and the pertinacity of Sumner to achieve this result. The negro suffrage feature was tacked on the military bill by the conservative Republicans under the leadership of Bingham, Blaine and Sherman because they feared that, if Reconstruction went over to the Fortieth Congress, Stevens and Sumner, enforced by Benjamin F. Butler and Oliver P. Morton (who since the veto of the Civil Rights bill had become a Radical), would carry through Congress a more drastic measure than the Act of March 2; but, if they should succeed in enacting their bill, they felt confident that Congress and the country would treat it as a finality.

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<sup>1</sup> *Globe*, p. 1563.

<sup>2</sup> March 11, 1867, *Globe*, p. 49.

But as it turned out the victory was with the Radicals. Sherman thought that "the bill was much injured by the additions in the House."<sup>1</sup> The Wilson Amendment, as we have seen, began the process of disfranchising the white men from voting which was extended further by the Supplemental Act of March 23; and the Shellabarger Amendment deprived the "Southern whites of the option between military government and universal negro suffrage" which the Sherman bill left them. The Southerners could no longer argue that it was better to retain their present partial control of their local affairs without negro suffrage than to secure representation in Congress with it.<sup>2</sup> In his bill Sherman "carefully" left "open to the South the whole machinery of reconstruction":<sup>3</sup> their State governments should initiate the measures towards reorganization. But the Supplemental Act of March 23 provided machinery which made reconstruction on the basis of universal negro suffrage mandatory.

The country fully sustained Congress.<sup>4</sup> The argument prevailing with both was that the negro must have the ballot for his protection; and moreover only with his aid could a sufficiently large "loyal" element be obtained to reconstruct the States on what were deemed correct principles. "We all know," said Fessenden, that the "loyal" white people "are but a very small minority."<sup>5</sup> On any other plan, it was argued, the former "rebels" would secure the control in the Southern States and uniting with the "Copperheads" at the North again

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<sup>1</sup> The Wilson and Shellabarger amendments, March 7, Sherman Letters, p. 289.

<sup>2</sup> *The Nation*, March 14, p. 212.

<sup>3</sup> Sherman Letters, *l.c.*

<sup>4</sup> "Its supremacy [that of Congress] is practically unquestioned; its hold upon the people's confidence is assured. Its bitterest enemies confess that its decrees are final and advise submission to all its demands. . . . No Congress ever sat before that was so trusted by its friends, so terrible to its foes, so irresistible in its will." — *The Nation*, March 7, p. 190.

<sup>5</sup> Feb. 19, *Globe*, p. 1556.



govern the country. To frustrate this was not to obtain a mere partisan advantage but to preserve the grand results of the war. John Jay in a letter to Chase mirrored an aspect of the question which presented itself to the main body of Republicans — men who were actuated by patriotism and not by political self-interest. “The bare idea of the rebel States casting their votes for election in 1868” he wrote — “the blacks being excluded — and giving us again a democratic and rebel government is altogether intolerable — and yet that is what the Northern Democracy begin to hope for and expect.”<sup>1</sup> The misconception of the North was that the Southerners had learned nothing by the war and that they were the same arrogant men who had formerly dominated in Congress and in political conventions. To any one, who saw them at this time, nothing could have been more obvious than that they were humbled before the knowledge that their cause was lost. Resolved submission to the two great decisions, that secession and slavery were dead, was everywhere the attitude of the former Confederates, but the Radicals by the persistence of their arguments, persuaded the Republican party that this was not the true state of the case. Because the South would not own up that she had been wrong and display at once a strong national feeling they assumed that she did not accept the accomplished facts. They seemed to require that the Southern people should suffer a change of heart in the twinkling of an eye, such as is supposed to occur at a Methodist revival meeting. But as Governor Andrew sagaciously put it, “The true question is, now, not of past disloyalty but of present loyal purpose.”<sup>2</sup> But this the Radicals could not or would not see. They looked upon the belief of the Southerners in the abstract right of secession and their rejoicing at the heroic

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<sup>1</sup> Jan. 5, Diary and Correspondence, S. P. Chase, p. 519.

<sup>2</sup> Life of Andrew, Pearson, vol. ii. p. 279.

exploits of their soldiers during the war as sins. But how indeed after such a struggle and such sacrifices could the former Confederates feel otherwise? On the practical question of loyalty the Southern men were sound. They were willing to give a sincere allegiance to the Union and the Constitution. They admitted that the practical right of secession had been decided against them by the God of battles and were willing to declare that never again would they invoke that right. They recognized faithfully the abolition of slavery. No doubt can exist but that they would gradually have come to an obedience of the Civil Rights law of Congress without the undue pressure that was proposed. Was not that enough? Could not the victorious North wait a little for the acceptance of the Fourteenth Amendment?

The Radicals were pertinacious in their endeavour to put the Southerners in the wrong. A favourite question asked of General Lee and others was, In the event of war between the United States and France or England which side would the late secessionists take? Literally the answers were not always satisfactory but the spirit of them supports the view that I have taken.<sup>1</sup> And the question itself was not a practical one. Diplomacy was being exerted to settle the differences with France and England without recourse to arms and these were in the end successful.

But it was Sumner and not Andrew who was swaying Northern opinion; for this his singleness of purpose served. Fostering care for the negro and anxiety for the security of the government and not his aspirations for the presidency (which, as well-supported tradition has it, were undeniable) actuated Sumner when he

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<sup>1</sup> Report of the Joint Committee on Reconstruction, Testimony, Virginia, etc., pp. 74, 121, 130, *ibid.*, Florida etc., pp. 133, 154, *ibid.*, Arkansas, etc., pp. 109, 110.

said, "As you once needed the muskets of the colored persons so now you need their votes."<sup>1</sup> Senator Wilson, however, his colleague, and a cleverer politician, had an eye to the partisan importance of the negro vote. Estimating the number of white voters in "the ten rebel States" at 923,000 and the coloured at 672,000 he was hopeful that the Republican party would receive from this quarter reinforcements in Congress and the electoral college. South Carolina and Mississippi he counted as sure, for there the negroes outnumbered the whites; and he also believed that the negroes and "loyal" white men acting together would carry Louisiana, Alabama and North Carolina for the Republicans.<sup>2</sup> Stevens did not urge this phase of the partisan argument; indeed he feared that the Southern States might go Democratic and he therefore sneered at the "impatience to bring in these chivalric gentlemen lest they should not be here in time to vote for the next President of the United States."<sup>3</sup> He preferred to hold the ten Southern States as territories; then the elections would be carried in the proper way by the States which had adhered to the Union.

While the Reconstruction Acts were not as "thorough" as Stevens and Sumner desired, they are nevertheless the heroes of this legislation: without them it would not have been enacted by the Thirty-ninth Congress and possibly not at all. Stevens, who may be said to have inspired the military control and the disfranchisement provisions, was without constructive genius but he had the power of carrying measures devised by other men through the House by overbearing all opposition. Blaine in his eulogy on President Garfield rates (justly I think) Clay, Douglas and Thaddeus Stevens as "the three most distinguished parliamentary leaders hitherto developed in this country."<sup>4</sup> They had, he continues, this trait in

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<sup>1</sup> Dec. 13, 1866, Dewitt, p. 150; *Globe*, p. 107.

<sup>2</sup> March 15, 1867, *Globe*, p. 113.

<sup>3</sup> Feb. 18, *Globe*, p. 1317.

<sup>4</sup> This oration was delivered Feb. 27, 1882.

common — “the power to command. In the give-and-take of daily discussion, in the art of controlling and consolidating reluctant and refractory followers, in the skill to overcome all forms of opposition, and to meet with competency and courage the varying phases of unlooked-for assault or unexpected defection it would be difficult to rank with these a fourth name in all our Congressional history.” This is an excellent estimate by a competent observer — himself an adept in the business and management of the House. But there is a distinction which Blaine did not draw between Clay on one side and Douglas and Stevens on the other. Recalling Clay suggests peace, recalling Douglas and Stevens suggests the sword. Douglas’s repeal of the Missouri Compromise was in the interest of slavery and precipitated the Civil War. Stevens’s Reconstruction Acts, ostensibly in the interest of freedom, were an attack on civilization.

“Sir,” declared Sumner in the Senate January 21, 1870, “I am the author of the provision” in the Reconstruction Act conferring universal negro suffrage.<sup>1</sup> While this is not exactly true, yet even at this time [1870] when negro suffrage was popular and many senators were eager to show that they had a share in its accomplishment, Sumner was by no means unduly arrogant when he claimed for himself that which was then regarded an honour. Edward L. Pierce, his appreciative friend and faithful biographer, has justly written, “For weal or woe, whether it was well or not for the black man and the country, it is to Sumner’s credit or discredit as a statesman that suffrage, irrespective of color or race, became fixed and universal in the American system.”<sup>2</sup> Discussing the suffrage provision of the Reconstruction Act, Pierce referred to “Sumner who led” and “the statesmen who followed”: this in my judgment is a correct statement of the case although

<sup>1</sup> Sumner’s Works, vol. xiii. p. 304.

<sup>2</sup> Vol. iv. p. 228.



Sumner was not a parliamentary leader like Stevens. While both often antagonized their supporters, Stevens possessed the power of compelling them to fall into line when the crucial vote was taken, but Sumner's leadership lay in a constant urging of a consistent policy. In the autumn of 1865 Andrew attempted to win him over but the cavalier response showed that the senator was fixed in his idea that drastic measures were necessary to protect the negro,<sup>1</sup> although otherwise he might have had sympathy with the poverty-stricken gentlemen and litterateurs of the South, as he had not the slightest feeling of vindictiveness.<sup>2</sup>

At Sumner's back were the ministers and school-teachers of New England and of the West, where New England ideas held sway, and his known following increased his influence in the Senate. He was the "scholar in politics"; and as such, what might have been expected of him before venturing to advocate in the Senate the immediate enfranchisement of such an ignorant mass of an alien race? It was an age of science — the era of Darwin and Spencer, of Huxley and Tyndall. The influence of heredity and the great fact of race were better understood than ever before. Sumner's study it is true was literature, not science, but these facts were permeating literature. "Science has now made visible to everybody," wrote Matthew Arnold, "the great and pregnant elements of difference which lie in race."<sup>3</sup> And Sumner had an intimate friend with

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<sup>1</sup> Life of Andrew, Pearson, vol. ii. p. 273.

<sup>2</sup> See the pathetic account in Life of Simms, Trent, p. 293 *et seq.*; also Reconstruction in Mississippi, Garner, p. 123.

<sup>3</sup> Culture and Anarchy, p. 124. While this was not published until 1869, the thought may well have occurred to Arnold earlier, in fact at almost any time after the publication of the Origin of Species (1859). Here is the opinion of a radical abolitionist, Rev. J. A. Thome of Cleveland, written before the war: "The plantations of the South are graveyards of the mind; the inexpressive countenances of the slaves are monuments of souls expired; and their spiritless eyes are their epitaphs." — Cited in Helper's Impending Crisis, p. 409.

whom he had often sat at table, and who in his domestic trouble sent him this word, "My dear Sumner, you have my deepest and truest silent sympathy";<sup>1</sup> and this friend, Louis Agassiz, was one of the most distinguished men of science in America. Had the senator asked advice of the scientist this is the word he would have received: "We should beware," Agassiz had written to Dr. Samuel G. Howe in August 1863, "how we give to the blacks rights, by virtue of which they may endanger the progress of the whites before their temper has been tested by a prolonged experience. Social equality I deem at all times impracticable, — a natural impossibility, from the very character of the negro race. Let us consider for a moment the natural endowments of the negro race as they are manifested in history on their native continent as far as we can trace them back, and compare the result with what we know of our own destinies, in order to ascertain within the limits of probability, whether social equality with the negro is really an impossibility. We know of the existence of the negro race, with all its physical peculiarities, from the Egyptian monuments, several thousand years before the Christian era. Upon these monuments the negroes are so represented as to show that in natural propensities and mental abilities they were pretty much what we find them at the present day, — indolent, playful, sensual, imitative, subservient, good-natured, versatile, unsteady in their purpose, devoted and affectionate. From this picture I exclude the character of the half-breeds, who have, more or less, the character of their white parents. Originally found in Africa, the negroes seem at all times to have presented the same characteristics wherever they have been brought into contact with the white race; as in Upper Egypt, along the borders of the Carthaginian and Roman settlements in Africa, in Senegal in juxtaposition with the French, in Congo in juxtaposition

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<sup>1</sup> Pierce, vol. iv. p. 305.

with the Portuguese, about the Cape and on the eastern coast of Africa in juxtaposition with the Dutch and the English. While Egypt and Carthage grew into powerful empires and attained a high degree of civilization; while in Babylon, Syria, and Greece were developed the highest culture of antiquity, the negro race groped in barbarism and *never originated a regular organization among themselves*. This is important to keep in mind, and to urge upon the attention of those who ascribe the condition of the modern negro wholly to the influence of slavery. . . . I am not prepared to state what political privileges they are fit to enjoy now; though I have no hesitation in saying that they should be equal to other men before the law. The right of owning property, of bearing witness, of entering into contracts, of buying and selling, of choosing their own domicile, would give them ample opportunity of showing in a comparatively short time what political rights might properly and safely be granted to them in successive instalments. No man has a right to what he is unfit to use. Our own best rights have been acquired successively. I cannot, therefore, think it just or safe to grant at once to the negro all the privileges which we ourselves have acquired by long struggles. History teaches us what terrible reactions have followed too extensive and too rapid changes. Let us beware of granting too much to the negro race in the beginning lest it become necessary hereafter to deprive them of some of the privileges which they may use to their own and our detriment.”<sup>1</sup>

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<sup>1</sup> Life and Correspondence of Louis Agassiz, E. C. Agassiz, vol. ii. p. 605. Colonel Thomas Wentworth Higginson advises me that when, after being wounded, he returned to Massachusetts, in the autumn of 1863, he went to the State House to call upon Governor Andrew and there found Agassiz, who asked with great interest about the behaviour of his black soldiers. Higginson answered that they had behaved admirably, both in camp and under fire, when Agassiz at once spoke out in his eager way: “Then they must vote of course. The man who risks his life for his country has the right to vote in it. There is no question about that.” (See Boston *Evening Transcript*,

Let me emphasize the fact that this was written in 1863. What the whole country has only learned through years of costly and bitter experience was known to this leader of scientific thought before we ventured on the policy of trying to make negroes intelligent by legislative acts: and this knowledge was to be had for the asking by the men who were shaping the policy of the nation.

Sumner showed no appreciation of the great fact of race, nor, so far as my considerable reading of the debates in Congress goes, did any of the men who took a prominent part in this legislation.<sup>1</sup> Sherman indeed declaimed against negro rule. "Beware, sir," he said, "lest in guarding against rebels you destroy the foundation of republican institutions. I like rebels no better than the Senator from Massachusetts [Sumner]; but, sir, I will not supersede one form of oligarchy in which the blacks were slaves by another in which the whites are disenfranchised outcasts. Let us introduce no such

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Oct. 25, 1905.) This anticipated Lincoln's famous suggestion to the Louisiana convention to give the suffrage to the "very intelligent" negroes and to those who had "fought gallantly in our ranks." (See vol. iv. p. 485.) The second impulsive thought of Agassiz conflicts little, if at all, with the careful scientific reflections in his letter to Dr. Howe. The number of coloured troops in the army was 180,000 (vol. iv. p. 334). Forty-three thousand of these came from the ten States we are considering (Virginia, the two Carolinas, Florida, Georgia, Alabama, Mississippi, Louisiana, Texas, Arkansas. History of the Negro Race in America, Williams, vol. ii. p. 300). In these ten States, under the Reconstruction Acts, 700,000 negroes were granted the suffrage.

<sup>1</sup> Senators Doolittle, McDougall and Cowan maintained that the mass of negroes at the South were unfit for the suffrage, *Globe*, 2d Sess. 39th Cong., pp. 1375, 1377, 1629, 1630, but they were in the opposition. Representative Mungen, a Democrat from Ohio, spoke well, July 8, 1867 on the race question quoting Dr. Knox, an ethnologist, and also Agassiz, *Globe*, p. 518. *The Nation* (July 18, 1867, p. 41) referred to his speech as that of a gentleman "who knew nothing whatever of the subject." Senator Morton said, March 16, 1867 (*Globe*, p. 168): "I would have been in favor of having the colored people of the South wait a few years until they were prepared for suffrage, until they were to some extent educated; but the necessities of the times forbade that; the condition of things required that they should be brought to the polls at once."



horrid deformity into the American Union.”<sup>1</sup> Senator Howard too did not want to see governments “based exclusively upon the votes of black persons”;<sup>2</sup> but the general impression which one obtains is that the Republicans believed that the negro would equal the white man could he have education and his other chances. Sumner did not embrace universal negro suffrage without some reflection. He said to John C. Ropes that to enfranchise this uneducated mass was foreign to his convictions and his whole habit of thought, but the fact of it was the suffrage was necessary to protect the negro.<sup>3</sup> He moved to amend the supplemental bill so as to require the Southern States to establish a system of public schools open to both negroes and whites, but this amendment was lost by a tie vote.<sup>4</sup> Sumner’s disappointment was so keen at this result that on reaching his house after the adjournment of the Senate he burst into tears.<sup>5</sup>

In my judgment Sumner did not show wise constructive statesmanship in forcing unqualified negro suffrage on the South. While the work of destruction was going on, his services to the anti-slavery cause were of the utmost value. We may all agree with Moorfield Storey that “Charles Sumner was a great man in his absolute fidelity to principle . . . his unflinching courage, his perfect sincerity, his persistent devotion to duty, his indifference to selfish considerations, his high scorn of anything petty or mean”;<sup>6</sup> but he failed in his Reconstruction policy from regarding only one side of the problem. The point made by George S. Boutwell that Sumner was very “unpractical in the affairs of government” and left no mark upon the statutes except an

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<sup>1</sup> Feb. 19, *Globe*, p. 1564.

<sup>2</sup> March 11, *ibid.*, p. 56.

<sup>3</sup> Communicated to me by Mr. Ropes, March 6, 1894.

<sup>4</sup> Sumner’s Works, vol. xi. pp. 146-163; *Globe*, p. 170.

<sup>5</sup> Pierce’s Sumner, vol. iv. p. 317; George F. Hoar’s Autobiography, vol. i. p. 257.

<sup>6</sup> Life of Sumner, p. 431.

insignificant amendment to a law excluding Mongolians from citizenship<sup>1</sup> does not seem to me of great importance. I do not mean to imply that the knack of drawing bills is not a high quality. That power of legislative expression which secures the support of fellow law-givers and at the same time gives a clear meaning to the enacted law is a desirable possession but Sumner made a powerful impress upon the legislation of his time without it. Nor was he a man of one idea. His large knowledge of the world and the manifold connections he had formed at home and abroad enabled him to be of great service to his country as chairman of the Committee on Foreign Relations; yet even here we shall not appreciate his service by reading his pompous speeches but must look for it in his private correspondence and in reports of private conversations.

Sumner persuaded himself that suffrage was an "essential right," not a privilege; and he said in the Senate, "Whatever you enact for human rights is constitutional. There can be no State rights against human rights."<sup>2</sup> Nearly two years before the reconstruction legislation was enacted Richard H. Dana wrote: "Sumner who has high and great instincts and great moral energy never had any logic, could never see a fallacy on his own side, could never see the joke against himself. He is a good seer but a bad guide. He never did care a farthing for the Constitution, is impatient of law and considers his oath to have been not to the Constitution but to the Declaration of Independence. If the negro votes he does not care how the result is obtained or what else may follow."<sup>3</sup> His lack of imagination prevented his putting himself into the place of the defeated South-

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<sup>1</sup> Boutwell's *Reminiscences*, vol. ii. p. 47. Pierce discusses this subject in vol. iv. p. 92. He mentions also a number of bills on behalf of the negroes, which Sumner introduced, *ibid.*, pp. 92, 181, 322, 323, but does not say that any of them passed.

<sup>2</sup> Pierce's *Sumner*, vol. iv. pp. 319, 365.

<sup>3</sup> Letter of June 3, 1865. Adams's *Dana*, vol. ii. p. 332.

erners; could he have done so he was capable of espousing their cause as did Andrew. "Sumner," wrote Dr. Holmes, "seems to me to have less imagination, less sense of humor or wit than almost any man of intellect I ever knew. P. B. said of him in the Temple Place days that if you told him the moon was made of green cheese he would say, 'No, it cannot be so' and give you solid reasons to the contrary."<sup>1</sup> Could Fessenden, Sherman, Trumbull and Andrew (had he been in the Senate) have framed a scheme of reconstruction capable of being adopted, it would have been far better than the actual one of which Stevens and Sumner are the reputed fathers. Sumner lent his great influence to a policy of injustice to a prostrate foe, to a policy at variance with the political philosophy of Burke and the teaching of modern science, contrary to the spirit of Lincoln's second inaugural and to his every pronouncement on reconstruction: he exemplified the dictum of Bishop Stubbs, "that the worst cause has often been illustrated with the most heroic virtue."<sup>2</sup>

The Thirty-ninth Congress was an able body of men<sup>3</sup> but they did not study scientifically the problem of "the combination in one social organization of two races more widely different from one another than all the other races."<sup>4</sup> I do not believe that philosophers, scientists and historians would govern the country to suit the greatest number as well as do the statesmen and politicians, but there are times when the men who work in libraries and laboratories should be called in counsel and this was pre-eminently such an occasion. Andrew worked in the spirit of the library and laboratory; he accumulated facts "with the zeal of a scientist." When in Washington he sought out Southern men of position; in New York he stopped at the New York Hotel, which

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<sup>1</sup> Aug. 26, 1873, *Life of Holmes*, Morse, vol. ii. p. 202.

<sup>2</sup> *Constitutional History of England*, vol. i. p. 4.

<sup>3</sup> Vol. v. p. 529.

<sup>4</sup> *Agassiz, Life*, vol. ii. p. 595.

was the resort of Southerners; he became President of a Land Company, the object of which was to further the investment of Northern capital in the South, for he thereby aimed to bring about business confidence between the two sections as a precursor of political confidence. The "ruined masters" had his sympathy now as the "oppressed slaves" had had it before and during the war.<sup>1</sup>

The radical theory of reconstruction was that the work would be done by the loyal whites and negroes but the fallacy of counting on the "loyal whites" as an important factor was seen by Governor Andrew. "Everybody in the Rebel States," he said, "was disloyal with exceptions too few and far between to comprise a loyal force to constitute the State, even now that the armies of the rebellion are overthrown. . . . The truth is the public opinion of the white race in the South was in favor of the rebellion. . . . All honor to the loyal few! But I do not regard the distinction between the loyal and disloyal persons of the white race, residing in the South during the rebellion as being for present purposes a practical distinction. It is even doubtful whether the comparatively loyal few (with certain prominent and honorable exceptions) can be well discriminated from the disloyal mass."<sup>2</sup> All this was strictly true. Many good and able men had opposed secession but when their States decided to secede they went with their States and took part in the war, incurring the same political guilt as did the most ardent fire-eaters. These men were not available under the Congressional policy of reconstruction although they had come to the front in the movements inaugurated by Johnson. Of 98 delegates to the Mississippi convention of 1865, seventy were Whigs or members of the old Constitutional Union party; only 13 had been in sym-

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<sup>1</sup> Life of Andrew, Pearson, vol. ii. p. 266.

<sup>2</sup> See vol. v. p. 607, note 1.



pathy with the movement for secession.<sup>1</sup> Four of the members of Congress elected had been Whigs, one a Union Democrat; all were originally opposed to secession but bowed to the will of the majority.<sup>2</sup>

The tone of the Georgia convention of 1865 (composed of 300 delegates) is indicated by the fact that of the 21 members who had also sat in the convention which passed the ordinance of secession in 1861, 20 had voted against the resolution declaring it the right and duty of the State to secede. South Carolina's convention numbered more than 100 but only about a dozen were fire-eaters. Of North Carolina's 128 delegates 8 or 9 had believed in the constitutional right of secession, about 32 more desired it irrespective of any theory while 75 or 80 had been believers in neither secession nor revolution: of these last all but 8 or 10 acquiesced in the work of the secession convention and submitted to Confederate rule. The convention of 1865 chose an old-line Whig and an original opponent of secession for its president.<sup>3</sup>

Such men as these, all but a few of whom represented the conservative forces of the community, and many of whom were of high character and standing, the Radicals spurned, taking in their place for the most part shifty men or men of bad character, who could change with the complexion of the time and take any sort of an oath to back up their change of opinion. North Carolina was a State where these "loyal" men were supposed to abound but of them Sidney Andrews, who did not believe in the Johnson policy, wrote: "In North Carolina there is a great deal of something that calls itself Unionism; but I know nothing more like the apples of Sodom than most of this North Carolina Unionism. It is a cheat, a will-o'-the-wisp, and any man who trusts

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<sup>1</sup> Life of Lamar, Mayes, p. 156.

<sup>2</sup> Reconstruction in Mississippi, Garner, p. 151.

<sup>3</sup> The South since the War, Andrews, pp. 51, 133, 137, 239.

it will meet with overthrow.”<sup>1</sup> With such material as this plus “carpet-baggers” from the North and negroes, Congress proposed to reconstitute the Southern States, ignoring the opportunity to revive the old party divisions, create a healthy political life and prevent a solid South.

The difference between the first and second sessions of the Thirty-ninth Congress is like the difference between two distinct bodies, one conservative, the other radical. During the first session Trumbull and Fessenden were the dominating men. Every measure which passed was carefully prepared and thoroughly discussed. To the second session may be applied the words of Burke regarding the National Assembly of France, “Measures are decided before they are debated.”<sup>2</sup> The Journal of the Joint Committee on Reconstruction furnishes an effective contrast between the two. During the first there were twenty-two meetings of this committee at which the different votes indicate how completely every question was canvassed. Careful deliberation was the invariable rule in committee and Congress. During the second session there were but two meetings<sup>3</sup> of the committee, at the second of which Stevens’s military bill was agreed upon. Stevens apparently dominated the committee as Fessenden<sup>4</sup> had previously dominated it. Conkling complained [January 26] that the House chairman would not call the committee together,<sup>5</sup> the inference being that he did not desire a meeting until he felt sure that his own project would be approved. In Congress feverish haste characterized the proceedings. The serious discussion of a measure of reconstruction began on January 3 and the Act was passed over the President’s veto on March 2. The conservative Republicans may well have said,

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<sup>1</sup> P. 391.    <sup>2</sup> Reflections on the Revolution in France.    <sup>3</sup> Feb. 2, 6, 1867.

<sup>4</sup> Fessenden was in wretched health. Life of Grimes, Salter, p. 299.

<sup>5</sup> *Globe*, p. 782.

"O, most wicked speed . . .

It is not, nor it cannot come to good."

It was indeed strange that, within two years of that benevolent, mercy-compelling second inaugural of Lincoln's, legislation so harsh should have been enacted.

The subordinate position of Trumbull and Fessenden at the second session is remarkable. Trumbull thought the military bill superfluous but he seemed to be in favour of negro suffrage; Fessenden on the other hand liked the military part but not the other.<sup>1</sup> But neither seems to have made any important opposition to the radical scheme unless in a way not now apparent on the surface. In the Senate caucus, to which reference has been made, there was a decided difference of opinion and it is hard now to realize the point at issue. The dispute arose over Sumner's proposition that the "rebel States" must put negro suffrage into their constitutions. Sumner, recalling the discussion, said in 1870 that Trumbull was "sullen in his accustomed opposition."<sup>2</sup> Fessenden was bitterly opposed to the provision.<sup>3</sup> Sumner, however, carried it and thought it a great achievement. "That evening in caucus," he wrote, "some few saw the magnitude of the act and there was corresponding exultation. Wilson wished to dance with somebody."<sup>4</sup> He must have thought that, although the bill provided that negroes might vote for delegates to the conventions, yet they would be so much under the influence of their old masters that constitutions might be framed in the conventions, which should exclude them from voting or place qualifying restrictions on their exercise of the suffrage. Fessenden therefore may have manifested his opposition to negro suffrage<sup>5</sup> in this indirect manner. Sherman too could not have approved

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<sup>1</sup> *Globe*, pp. 1556-1561; Pierce's Sumner, vol. iv. p. 314.

<sup>2</sup> Works, vol. xiii. p. 305.

<sup>3</sup> Pierce's Sumner, vol. iv. p. 314, note 3.

<sup>4</sup> Letter to Bright, May 27, *ibid.*, p. 320.

<sup>5</sup> See Dewitt, p. 176.

of the supplemental Reconstruction bill. He desired to leave the initiative in the process of reconstruction to the States instead of to the commanding general as did also Fessenden<sup>1</sup> but Sherman did not oppose the bill and voted for it with his party associates. Fessenden and Trumbull also voted with their party at all the crucial times. But in truth they with other conservative men were carried along by this tide of radicalism. Things had so fallen out that it could not be stemmed. Most revolutions go too far and so did ours, but it undoubtedly would not have done so had not Lincoln been killed. Three men are responsible for the Congressional policy of reconstruction: Andrew Johnson by his obstinacy and bad behaviour; Thaddeus Stevens by his vindictiveness and parliamentary tyranny; Charles Sumner by his pertinacity in a misguided humanitarianism. Emerson's words tell the story, "They mix the fire of the moral sentiment with personal and party heats, with measureless exaggerations and the blindness that prefers some darling measure to justice and truth."<sup>2</sup>

The radical tendency of the last session of the Thirty-ninth Congress was shown in other measures than the Reconstruction Acts. Irritated by the President's wholesale removals from office, Congress passed over his veto, the Tenure-of-office bill which took away from him the power of removal of office-holders, a power which had been exercised by the Executive from the foundation of the government.<sup>3</sup>

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<sup>1</sup> *Ante*; March 15, *Globe*, p. 109.

<sup>2</sup> On Reformers. Emerson did not apply the words as I have. Cited by Bancroft, the Negro in Politics, p. 14.

<sup>3</sup> During his swinging-around-the-circle tour Johnson said in St. Louis [Sept. 1866], "I will 'kick them [the office-holders] out' just as fast as I can." Trial, vol. i. p. 344. In a debate in the House on Jan. 5, 1867 Washburne and Wentworth [Illinois] complained that the Secretary of the Treasury had removed their collectors and Stevens said that for no cause on earth but the building up of a new party he has "turned out of office the best men in my dis-



A strong minority in Congress desired the impeachment of the President and it was doubtful whether the two-thirds Republican majority in the Senate could be held intact for his conviction; to provide therefore against contingencies of illness and death and a possible hanging back of certain conservative Republicans in the mad rush of radicalism it was deemed desirable that the Republican strength in the Senate should be augmented. Congress accordingly passed an act over the President's veto admitting Nebraska into the Union; and, in the Senate which assembled March 4, 1867, two thorough-going Radicals represented the new State. Wade who had charge of the territorial bills made a strenuous effort to secure also the admission of Colorado, but this, on account of her small population and distance to the westward, he was unable to carry over the President's veto, losing the votes of Edmunds, Fessenden, Foster, Grimes, Harris and Morgan, all stanch Republicans.<sup>1</sup>

If President Johnson should be removed as the result of impeachment the President *pro tempore* of the Senate, according to the existing statute, took his place. The senatorial term of Foster, who had filled the office during the Thirty-ninth Congress, expired March 4, 1867; it was necessary to choose a new man and the Radicals were determined that the succession should fall to one of them. Fessenden and Wade had been spoken of but when the caucus for the selection came to be held no effort was made for the Conservative and Wade was selected without opposition. A controversy which took place in the House on March 23, 1867, between

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trict." *Globe*, p. 292. "When Johnson struck at the offices," writes Samuel W. McCall who has had a long experience in Congress, "he dealt a blow at what was then, as it always has been, a sore spot in the make-up of the average Congressman. . . . When his district or state is invaded and his friends are ruthlessly turned out of post offices and clerkships and custom houses and his enemies put in their places freedom is very apt to shriek." *Atlantic Monthly*, June 1901, p. 824.

<sup>1</sup> Dewitt, p. 179; March 1, 1867, *Globe*, p. 1928.

Stevens and Blaine shows, however, that the election of Wade was not entirely satisfactory. Stevens asserted that Blaine had declared on the floor of the House, "There will be no impeachment by this Congress; we would rather have the President than the shallywags of Ben Wade." Blaine denied having made such a remark but he had expressed the opinion that "Fessenden would be a safer man to intrust with the executive power of the nation in certain contingencies than Wade."<sup>1</sup> An altercation between Bingham and Benjamin F. Butler in the House in which the bitterest and most insulting personalities were exchanged demonstrated that triumphant radicalism had received a powerful reinforcement in the Massachusetts representative.<sup>2</sup>

Tennessee, the one reconstructed Southern State, caught the spirit of the time and passed an act in legislature conferring the suffrage upon the negroes.<sup>3</sup>

My Chapter Thirty might have been entitled the Mistakes of President Johnson, this Chapter, the Mistakes of Congress; but the common sense of the American people saved them from crowning blunders. They confiscated (practically) none of the land of their prostrate foe; they hanged nobody for a political crime. These are grand results furnishing a new chapter in the world's history. Never before on the signal failure of so great an attempt at revolution had a complete victory been attended with no proscriptions, no confiscation of land, no putting of men to death. Another Ireland would have been created in the Southern States had not our people been endowed in large degree with humanity and good sense. Their restraint is all the more praiseworthy as the assassination of the loved and trusted Lincoln and the alleged complicity of

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<sup>1</sup> Dewitt, p. 217; *Globe*, p. 317.

<sup>2</sup> Dewitt, p. 213.

<sup>3</sup> Act of Feb. 25, 1867, Statutes for 1866-1867; Dewitt, p. 173; Feb. 7, 1867, *Globe*, p. 1048.

some of the Southern leaders in the crime wrung every victor's heart and seemed to cry out for vengeance.

Congress followed Stevens and Sumner a certain way but would not adopt their ideas in regard to the confiscation of land at the South. To the credit of both these radical leaders it must be said that neither desired any further bloodshed; neither wished to hang any so-called "rebel," not even Jefferson Davis. The people at large soon relinquished the desire to visit capital punishment on any of the Confederate leaders except Davis, but that he ought to be hanged was an opinion which long held more or less sway in many minds.<sup>1</sup>

An account of what was done with the President of the Southern Confederacy may be suitable in this place. After his capture Davis was imprisoned in Fort Monroe, [May 22, 1865,] and at first did not receive the treatment, to which the most distinguished prisoner ever held in the United States was entitled. His quarters were not the most salubrious and his fare not of the best; he was subjected to unnecessary privations, restraints and annoyances and to some petty indignities. Worst of all he was put in irons. General Nelson A. Miles, who was in command of the fort, had discretionary power from the Secretary of War "to place manacles and fetters upon the hands and feet of Jefferson Davis" if deemed advisable to render his imprisonment more secure. On May 23 [1865] Miles directed "that irons be put on Davis's ankles" and in his report to the War Department he said that Davis "violently resisted" the operation.<sup>2</sup> Mrs. Davis in her book gives a detailed and authenticated account of the occurrence. Captain Titlow, the officer of the day, came into the cell with two blacksmiths bearing a pair of iron anklets coupled with a chain and told Davis of the order which he had

<sup>1</sup> See some expressions cited by Dewitt, p. 232.

<sup>2</sup> Official Records of the War of the Rebellion. Ser. ii. vol. viii. pp. 563-571.

come reluctantly to execute. "Has General Miles given that order," asked Davis. "Yes," was the reply. "I would like to see General Miles." "Impossible, as the General was leaving the Fort." "May not the execution of the order be postponed until General Miles returns?" "Impossible." Davis then said: "It is an order such as no soldier should give. The intention is to torture me to death. I will not submit to indignities by which it is sought to degrade in my person the cause of which I was a representative." Titlow and the officer of the guard endeavoured to dissuade him from resistance. "I am a soldier and a gentleman," was the answer. "I know how to die" and pointing to the sentinel, "Let your men shoot me at once." He faced round and stood with his back to the wall, leading Titlow by his quiet manner to believe that he would offer no resistance and the blacksmiths were ordered to proceed with their work. As one of them stooped down to put on the fetters Davis flung him off so violently as to throw him on the floor. The blacksmith got up and raised his hammer to strike Davis but was stopped by Titlow. One of the sentinels cocked and aimed his musket at the prisoner. "You must not fire" was the order of the Captain. Four strong men without arms were then brought into the cell; they overpowered Davis; and the blacksmiths riveted one fetter and secured the padlock on the other.<sup>1</sup>

Four days later Miles received this despatch from Stanton: "Please report whether irons have or have not been placed on Jefferson Davis. If they have been, when was it done, and for what reason and remove them." Miles replied that the anklets were put on to prevent his running should he endeavour to escape.<sup>2</sup>

The harsh treatment of Davis was due to the panic

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<sup>1</sup> Life of Davis by his wife, vol. ii. p. 655. I have in some cases changed the third person to the first.

<sup>2</sup> O. R., ser. ii. vol. viii. p. 577.



which had seized the public mind following the assassination of Lincoln, the attempt on Seward and the designs on Johnson and Grant. A natural fear existed that the conspiracy was widespread and that an endeavour would be made to rescue Davis from his confinement. As Grant himself was affected by the panic<sup>1</sup> it is not surprising that men of less nerve should have done and said foolish things according to our interpretation, which is based on the known groundlessness of their apprehensions. As the fear subsided, rigour was relaxed and certain privileges were allowed the prisoner, who found in his medical attendant a sympathizing friend. In the autumn when his cell became damp, this surgeon recommended that he be removed to some other apartment and this recommendation was indorsed by Miles. On October 2 [1865] he was given a comfortable room on the second floor of Carroll Hall, which had been used as officers' quarters. From that time on his treatment was good. Additional privileges were continually accorded him. His health failing in the spring of 1866 a visit of his wife was permitted [May 3] and thereafter he was given the freedom of the fort on his parole not to attempt to escape. He was also allowed to see his counsel and friends. Mrs. Davis, who remained at the fort, has said of their life there, "Four rooms off the end of Carroll Hall were set apart for us, with a kitchen at the back and we were as comfortable as people could be who could 'not get out.'"<sup>2</sup> During his confinement he suffered from various disorders, but for some time before the war his health had not been good and while Confederate President he was often ill. When he came to Fort Monroe he looked "much wasted and very haggard" and said to his physician that his constitution was "completely shattered."<sup>3</sup> But he suf-

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<sup>1</sup> Vol. v. p. 151.

<sup>2</sup> *Life of J. Davis*, vol. ii. p. 773.

<sup>3</sup> *The Prison Life of J. Davis*, Craven, pp. 28, 53.

ferred no permanent injury from his prison life and lived to the ripe age of eighty-one.<sup>1</sup>

From the first it was a grave question what should be done with the head of the Southern Confederacy. At a conference the day after Lincoln's death [April 16, 1865] between President Johnson, Senators Chandler and Wade, John Covode and Benjamin F. Butler it was agreed by all that if Jefferson Davis was captured "he should be summarily punished by death";<sup>2</sup> but when he was taken [May 10, 1865] the excitement had begun somewhat to abate. Nevertheless President Johnson in a solemn proclamation [May 2] had charged him with complicity in the assassination of Lincoln<sup>3</sup> and this accusation was generally believed in Washington and in the country. Davis was also thought to have been the prime cause of the sufferings and deaths of Union prisoners at Andersonville and other prisons. When Judge-Advocate-General Holt on June 30, 1865, spoke of "the number and atrocity of the crimes alleged to have been committed by Davis and the overwhelming proof of his guilt believed to exist" he undoubtedly expressed the opinion of most officials and citizens. Holt advised that Davis be tried by a military court such as had condemned the conspirators connected with the assassination of Lincoln and the attempt on Seward.<sup>4</sup> Happily better counsels prevailed. The correspondence between the President and Chief Justice Chase in August and October 1865, show that Johnson at this time had no other idea than the trial of Davis by a civil court, a position in which he was supported by his Attorney-General and a majority of his cabinet. Attorney-General Speed was of the opinion that a trial for high

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<sup>1</sup> Robert E. Lee wrote from Richmond Nov. 26, 1867, "I saw Mr. Davis who looks astonishingly well and is quite cheerful." *Recollections and Letters, of General Lee*, by his son, p. 287. Davis was born June 3, 1808, and died Dec. 6, 1889.

<sup>2</sup> *Life of Chandler*, p. 281.

<sup>3</sup> Vol. v. pp. 157, 521.

<sup>4</sup> O. R., ser. ii. vol. viii. pp. 690, 855.

treason could not be had before a military tribunal and by January 4, 1866, he apparently thought that treason was the only charge on which an action could be maintained. Moreover, it was his opinion that the constitutional provision, that all criminal trials should "be held in the State where the said crime shall have been committed," required that Davis be tried in one of the late Confederate States. It was conceded that the most proper place for such a trial was in the State of Virginia.<sup>1</sup>

Stanton did not arrive at the truth as early as his associate Attorney-General Speed. As late as January 4, 1866, he seemed to think that there was some weight in the charge against Davis "of inciting the assassination of Abraham Lincoln" and of "the murder of Union prisoners of war by starvation and other barbarous and cruel treatment."<sup>2</sup> Later still [March 20, 1866] he was supported in his belief by a letter from his subordinate, Judge-Advocate-General Holt. Holt said that the evidence which he had collected proved "beyond a reasonable doubt" that Davis was an accomplice in the assassination of Lincoln and he renewed his former recommendation "that Davis be arraigned and tried before a military commission."<sup>3</sup> Holt, whose credulity was amazing, had been imposed upon by a number of perjuring rascals, and the depositions which he had taken were entitled to no credit whatever. The "cunningly devised diabolical fabrications of Conover (the chief rascal) verified by his suborned and perjured accomplices" were found out by the end of May 1866,<sup>4</sup> and this part of the case against Jefferson Davis fell utterly to the ground.

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<sup>1</sup> Appletons' Annual Cyclopædia, 1866, p. 514 ; Life of Chase, Schuckers, p. 535 ; O. R., ser. ii. vol. viii. pp. 715, 716, 843, 844 ; Seward's testimony, Impeachment Investigation, p. 380 ; Chase, *ibid.*, p. 546 ; Greeley to Chase, Am. Hist. Assn. Rep. 1902, vol. ii. p. 514.

<sup>2</sup> O. R., ser. ii. vol. viii. p. 843.

<sup>3</sup> *Ibid.*, p. 891.

<sup>4</sup> O. R., ser. ii. vol. viii. pp. 921, 931 ; see also many of the authorities cited in note 1, p. 158, vol. v.

The charge that Davis had authorized the cruel treatment of the Union prisoners at Andersonville and in other prisons was purely an assumption. At the instance of some prominent Republicans, George Shea, one of Davis's counsel, went to Montreal and examined the official archives of the Confederate States, convincing himself and the Republicans on whose behalf he acted, that there was not a tittle of evidence connecting the Confederate President with the sufferings and deaths in the Southern prisons.<sup>1</sup>

From the first, Davis had valuable friends at the North and some of them requested Charles O'Connor, a very eminent lawyer of New York City, to volunteer as counsel for his defence.<sup>2</sup> The disclosure that witnesses had been suborned for the purpose of convicting him on a trumped-up charge produced a reaction of public sentiment in his favour, which was increased by the almost simultaneous charge of two Northern Democratic newspapers that he had been cruelly treated in prison.<sup>3</sup> At about the same time Dr. Craven, his attending physician from May 25, to December 25, 1865, published his "Prison Life of Jefferson Davis." Although an earnest Republican, the charm of the Southerner had won him, and the facts of the narrative and his feeling expression of them aroused sympathy for the distinguished prisoner.<sup>4</sup>

The impression, which got abroad that Davis had not been kindly treated, disturbed the President and he asked the Secretary of the Treasury, McCulloch, to make him an unofficial visit [probably during May 1866]. "He was," said Johnson, "the head devil among the traitors and he ought to be hung; but he should have a fair

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<sup>1</sup> South. Hist. Soc. Papers, vol. i. p. 319; Life of Davis by his wife, vol. ii. p. 782 *et seq.*; see my vol. v. pp. 502, 508.

<sup>2</sup> June 2, 1865. His services were accepted by Davis, June 7, O. R., ser. ii. vol. viii. pp. 634, 655.

<sup>3</sup> O. R., ser. ii. vol. viii. p. 915 *et seq.*

<sup>4</sup> See *The Nation*, June 14, 1866, p. 776, June 22, p. 790.



trial and not be brutally treated while a prisoner." McCulloch found in Davis a gentleman and a patient prisoner, indisposed to complaint, and it was only by direct questions that he elicited the facts concerning the ill treatment of the first months of imprisonment. Davis was eager for trial and "thought the delay unnecessary and unjust."<sup>1</sup> It became a growing conviction that he ought to be tried or released from prison. O'Connor pushed the matter. George Shea, another of the counsel, enlisted the influence of Horace Greeley, Senator Henry Wilson of Massachusetts, Governor Andrew and Thaddeus Stevens,<sup>2</sup> all prominent Republicans, who wrought in their several ways to the same end. Stanbery, who had been Attorney-General since late in the summer of 1866, favoured the plan agreed upon; and John W. Garrett, President of the Baltimore and Ohio Railroad, secured, by means of his close friendship, the consent of Stanton.

Davis had been indicted by a grand jury of Virginia for high treason under the statute of 1862. On May 13, 1867 in pursuance of the agreement between the government and his counsel he was brought before Underwood, sitting at Richmond as Judge of the United States Circuit Court for the district of Virginia, by a writ of habeas corpus served on the commanding officer at Fort Monroe who had been directed by the President to respect it. The District Attorney stated that the government did not intend to prosecute the trial of the prisoner at the present term of the Court, and the Judge held that under the statute of 1862, high treason was aailable offence. The counsel [William

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<sup>1</sup> Men and Measures, McCulloch, p. 409. Johnson's desire to have Davis prosecuted is confirmed by Seward's and Judge Underwood's Testimony, Impeachment Investigation, pp. 381, 578; Dewitt, p. 233.

<sup>2</sup> The evidence in regard to Stevens is not quite clear and his remarks July 9, 1867 (*Globe*, p. 546) are inconsistent with his action as stated in the text. I have given him the benefit of the doubt, however.

M. Evarts assisted the government] on both sides agreed on \$100,000 as the amount; the Judge admitted Davis to bail, the recognizance being signed by Horace Greeley, Augustus Schell (a friend of Commodore Vanderbilt) and fourteen others. The Court then directed the Marshal to discharge the prisoner, and this was done amidst "deafening applause, huzzas and waving of hats" from the crowd which had gathered in the Court room. Wild enthusiasm greeted Davis as he emerged from the building. "The cheer that went up when he was released" wrote a correspondent of the Boston *Advertiser* from Richmond "told the story of the city's heart—it was jubilant and defiant. The ovation given Davis was for intensity and heartiness such as Boston perhaps never gave anybody or any cause." There was some murmuring in Congress touching his release and Greeley wrote that the sale of his history of the "American Conflict" almost ceased because of the clamour raised by his action in signing the bail-bond; thousands who had subscribed refused to take their copies. The case against Davis was continued from time to time and, in December, 1868, came up before Chief Justice Chase and Underwood, sitting as the United States Circuit Court for Virginia, who heard arguments on the motion for quashing the indictment. The two judges disagreed. Chase was in favour of granting the motion, and the matter was certified to the Supreme Court. But the general amnesty proclaimed by the President on Christmas Day 1868 included Davis and, as a result of it, in February 1869, an order of *nolle prosequi* was entered and he and his bondsmen were forever released. In these proceedings the public acquiesced.<sup>1</sup>

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<sup>1</sup> South. Hist. Soc. Papers, vol. i. p. 322; article, C. M. Blackford, *Trial of J. Davis*, vol. xxix.; *Life of Davis* by his wife, vol. ii. p. 768 *et seq.*; Chase's decisions compiled by B. T. Johnson, pp. 42, 43, 51, 57-78, 81, 122-124; New York *Tribune*, May 14, 1867; Boston *Advertiser*, May 20, 1867; Corr. Boston *Journal*, copied in *Anti-slavery Standard*, June 1,

With a just feeling of pride may we honour the officials and citizens, the Republicans and the Democrats, who contributed to this grand result. For assuredly it was a sublime thing that, despite the contentious partisanship of the time, men bitterly opposed on almost every other question, could agree that the highest wisdom demanded that Davis be released from prison and that he be not punished or even tried; that those in control recognized what had hitherto been so little appreciated "that the grass soon grows over blood shed upon the battle field, but never over blood shed upon the scaffold."<sup>1</sup> "There is not a single example of such magnanimity in the history of the world," declared Carl Schurz in the Senate, "and it may be truly said that in acting as it did this Republic was a century ahead of its time."<sup>2</sup>

Davis as a man of action now disappears from history. Later he wrote a book entitled, "The Rise and Fall of the Confederate Government," which was published by the Appletons and received a considerate reception at the North. He ended his book with the sentiment, "the Union, Esto perpetua."

In regard to Mrs. Davis's Memoir of her husband, it is remarkable that, while Davis's own book is contentious and one-sided and awakens the desire on the part of a

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1867; Appletons' Annual Cyclopædia, 1867, p. 507, 1868, p. 754; Underwood's Testimony, Impeachment Investigation, p. 579, Greeley's, p. 779; Life of Chase, Schuckers, ch. xlviii.; Life of Dana, Adams, vol. ii. p. 338; Exec. Doc. No. 14, 40th Cong. 1st Sess., p. 14; Recollections of a Busy Life, Greeley, pp. 415, 424. A reviewer of this book in *The Nation* for Nov. 5, 1868 calls Greeley's "being one of the bondsmen of Jefferson Davis" "a piece of insensate folly." Schofield wrote to Grant May 14, 1867: "The most perfect order and the utmost good feeling have prevailed throughout the city during the proceedings of the Court and since the release of the prisoner. The troubles which occurred a few days ago were only a temporary ebullition, easily suppressed. The excitement is rapidly passing away." S. E. D. 40th Cong. 1st Sess., No. 14, p. 14.

<sup>1</sup> Cited in Froude's *Elizabeth*, vol. iv. p. 368.

<sup>2</sup> April 19, 1870, *Globe*, p. 2815.

Northern man to argue it out with him, Mrs. Davis's *Memoir*, replete with womanly charm, awakens on almost every page our sympathy with Davis and our consideration for the cause he represented. In all the Southern literature, I know no other such moving plea for the side that fought so long and lost so hardly.

The forfeiture by Mrs. Davis of the copyright of her book, through an informality, gave the American Congress an opportunity for a graceful deed. In 1893, the Senate and the House unanimously passed an act restoring the rights and privileges of copyright to the author of the *Memoir of Jefferson Davis*.<sup>1</sup>

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<sup>1</sup> Cong. Record, pp. 2036, 2403, 2501. See Senator Hoar's account of his prevailing upon President Harrison to sign the bill. *Autobiography*, vol. i. p. 418.



## CHAPTER XXXII

CONGRESS had enacted its plan of reconstruction and the execution of the laws which embodied it must now engage our attention. The situation was unique in our country. A strong and compact party had passed these acts of immense consequence in the face of the bitter opposition of the President; and this President who thought them unconstitutional and outrageous was the agent for their administration. His attitude was soon made known by his Attorney-General. In the argument for the government in the case of *Mississippi vs. Johnson*, when that State applied to the United States Supreme Court for an injunction to restrain the President from the enforcement of the Reconstruction Acts, Stanbery by Johnson's authority stated: "Although counsel in their bill have said that the President has vetoed these acts of Congress as unconstitutional, I must say, in defence of the President, this, that when the President did that he did everything he intended to do in opposition to these laws. From the moment they were passed over his veto there was but one duty in his estimation resting upon him, and that was faithfully to carry out and execute these laws."<sup>1</sup> This promise was fulfilled. Before the Act of March 23 was passed the President had, through the General of the Army, assigned the commanders to the several districts as defined in the Act of March 2.<sup>2</sup> At this time the gov-

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<sup>1</sup> 4 Wallace, 492.

<sup>2</sup> A convenient list of those generals and their successors will be found in *Essays on the Civil War and Reconstruction*. Dunning, p. 144. This will be referred to hereafter as Dunning.

ernment of the Southern States was partly civil, partly military. There were the Johnson State governments and also the former county and municipal governments and State judiciaries. These were governments based on the consent of the white people of the South, and the superimposed military rule was unnecessary but nevertheless served as an adjunct for the preservation of order in the still unsettled condition of the Southern communities. It would have been excellent as a transition measure directly after the close of the war; and, as it was, most of the generals deserve praise for the careful manner in which they performed their difficult duties. Loyalty to Congress, which was now the government, was generally tempered by consideration for the feelings of their prostrate whilom foe and by a disposition to interfere as little as possible with the various local governments and judiciary.

Military government is not palatable to the people of the United States and in this case some friction resulted from the divided jurisdiction. Two generals, Sickles commanding the second district [North and South Carolina] and Sheridan commanding the fifth district [Louisiana and Texas], assumed a somewhat autocratic power which was not relished in their districts nor approved by the President. Moreover to preserve order was only part of the duty of the generals: they must set going the machinery to construct governments based on universal negro suffrage. At one time many of the Radicals believed in universal amnesty as an accompaniment of universal suffrage but the vindictive Radicals, with Stevens at their head, used tactics of constant pressure and encroachment and got as large a measure of white disfranchisement into the acts as possible, though differences among themselves resulted in the language being left somewhat vague. On these two points therefore, the limits of civil and military authority and the exact extent of the disfranchisement, instructions were desired

by the generals: a legal opinion was necessary and the President turned to his Attorney-General. On May 24, 1867 Stanbery gave an elaborate opinion stating who were disfranchised under the Reconstruction Acts. His interpretation was as generous as the language of the Acts permitted but was nevertheless that of a good lawyer. The dictum which most disturbed the Radicals was that when an applicant for registration as a voter in any of the ten Southern States took the oath prescribed by the Act of March 23 "his name," so Stanbery declared, "must go upon the registry. The board of registration cannot enter upon the inquiry whether he has sworn truly or falsely." Promptly from New Orleans came, in a despatch to Grant, General Sheridan's view. "Mr. Stanbery's interpretation," he said, "is practically in registration opening a broad macadamized road for perjury and fraud to travel on."<sup>1</sup> Sheridan's statement may have been true so far as concerned Louisiana, which had long borne the reputation of being electorally a corrupt State, but it had little, if any, application to the other States. The words, however, were taking and Sheridan's influence on Northern sentiment was potent: the ends of those Radicals, who wished the largest possible measure of disfranchisement, were served.

On June 12 Stanbery gave another opinion which may be summarized as stating that, during the interregnum until the new governments were constituted, the Johnson State governments were the ordinary rule, the military but an auxiliary.<sup>2</sup> In my view, the tenor of the Attorney-General's opinion was excellent. The Acts were harsh. Any mitigation of them by a generous

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<sup>1</sup> Despatch of June 22, Appletons' Annual Cyclopædia, 1867, p. 460,

<sup>2</sup> Stanbery's opinions are printed in the Sen. Ex. Doc. 1st Sess. 40th Cong., No. 14, p. 262 *et seq.* Dunning's abstract of them is of value, see pp. 125, 148, 153, 180. The two opinions are dated differently but they were considered together in the cabinet on June 18, and promulgated together.

construction, the extension of the suffrage to as many white men as possible, the restraint of the military power within limits were much to be desired. But hardly any one in the dominant party was now of this mind. The general opinion ran that Stanbery had driven a coach and six through the Reconstruction Acts.<sup>1</sup> Yet a sane view for a Radical of the time is found in the private correspondence of Chief Justice Chase, who, be it remembered, was a firm advocate of negro suffrage and who believed that Congress had "acted with great wisdom." "I see no ground for thinking," he wrote June 29, 1867, "that the President has not intended to carry out the Reconstruction Acts in good faith or that the Attorney-General has not honestly sought to ascertain and state their true meaning. I do not concur in the Attorney-General's opinions in some of their most important particulars, because I start with the premises that Congress has full power to govern the rebel States until they accept terms of restoration which will insure future loyalty, the fulfilment of national obligations, the repudiation of all rebellion and the obligations of rebellion; and the security of all rights for all men; and that the acts of Congress must be construed with reference to these ends liberally; whereas the Attorney-General starts with the premises that the acts are punitive and must be construed strictly. But I have known him long; am sure of his great legal abilities and equally sure that he is an upright and loyal man."<sup>2</sup> "A Summary. Who are entitled to Registration," was made by the Attorney-General and this was submitted by the President to his Cabinet. All with the exception of Stanton, who differed on controverted points, agreed with Stanbery's construction; and this Summary was sent to the several

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<sup>1</sup> Expression used (if I remember correctly) by E. L. Godkin in a letter to the London *Daily News*.

<sup>2</sup> Warden, pp. 667, 669. Chase and Stanbery were from the same city, Cincinnati.



commanders of the military districts to serve as their guide in the execution of the Reconstruction Acts.<sup>1</sup>

Congress had adjourned March 30 to the first Wednesday of July, but, if no quorum then assembled, the President of the Senate and the Speaker of the House were commanded to "adjourn their respective Houses without day." The opinions of Stanbery and their adoption by the President insured a quorum and Congress proceeded to pass over the President's veto the Act of July 19 to declare "the true intent and meaning" of the Acts of March 2 and 23. This Act provided that the Johnson State governments should be "subject in all respects to the military commanders of the respective districts and to the paramount authority of Congress." The commander of any district might remove any State, municipal or other official and fill his place subject only to the disapproval of the General of the Army [Grant]. Removals and appointments already made were confirmed. "And it shall be the duty" of the commanders, Section 4 said, "to remove from office all persons who are disloyal to the Government of the United States or who use their official influence in any manner to hinder, delay, prevent or obstruct the due and proper administration of this act and the acts to which it is supplementary." Section 5 annulled an important part of Stanbery's opinion. It provided that taking the oath was not sufficient to entitle an applicant to registration. No person should be registered unless the board decided that he was entitled thereto. Section 6 defined rigorously the meaning of the oath with the effect of increasing the number of white voters disfranchised; and Section 10 provided that no commander or member of the board of registration should be bound by any opinion of any civil officer of the United States.

The President had been divested of his powers to an extent without parallel in our history. For comparison

<sup>1</sup> Appletons' Annual Cyclopædia, 1867, p. 738.

one must go back to Charles I or Louis XVI. Johnson, however, had some authority left which he determined to exercise but he waited until the adjournment of Congress, which took place July 20 to reconvene November 21. For some time the relations between him and Stanton had been strained. The Secretary of War had radical sympathies, approved of the Congressional plan of reconstruction and showed in cabinet meetings that he differed with the President and his other advisers vitally and irreconcilably. During the consideration of Stanbery's opinions in cabinet he was also at odds with them; he favoured the supplementary act of July 19 and indeed according to his biographer made the original draft of it.<sup>1</sup> The President determined to get rid of him and on August 5 wrote to him a note saying, "Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted." Promptly came this word, "In reply I have the honor to say that public considerations of a high character, which alone have induced me to continue at the head of this department, constrain me not to resign the office of Secretary of War before the next meeting of Congress."<sup>2</sup> Johnson regarded this as a "defiance" and it whetted his purpose.<sup>3</sup> Four days previously Grant had protested against Stanton's displacement and on August 3, McCulloch thus wrote to the President: "After sleeping upon the question discussed yesterday, I have in no wise changed my opinion. I am satisfied that your own best interests and the best interests of the country will be promoted by non-interference on your part—letting the responsibility for impending evils rest where it properly belongs."<sup>4</sup> On the day that

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<sup>1</sup> Life of Stanton, Gorham, vol. ii. p. 373.

<sup>2</sup> Johnson to the Senate, Dec. 12, 1867. Trial of A. Johnson, vol. i. pp. 149, 152. This will be referred to as Trial.

<sup>3</sup> Ibid., p. 149.

<sup>4</sup> Johnson Papers, MS., Library of Congress. I have assumed that this letter refers to the case in hand; see Schouler vii, p. 110 n. 3.

the President requested Stanton's resignation, Chase said to him decidedly that no change in the War Department "would benefit the country or ought to be made," but so determined was he that no counsel would hold him back. Yet he appreciated that Stanton's successor must be a man in whom the whole country had implicit confidence and, before taking the first step, his choice had fallen upon Grant.<sup>1</sup>

Grant was the most popular man in the nation. It had already become highly probable that he would be the next president but it was not certain that he would be the nominee of the Republican party. A number of prominent Democrats regarded him with favour and he now had the power of shaping his course to commend himself to either party.<sup>2</sup> He was pretty near to the parting of the ways but he could have chosen either way consistently. Whatever may have been his opinion of the policy crystallized into the Reconstruction Acts of March 2 and 23, he believed that, now they were on the statute-book, they should be enforced loyally and faithfully and as general of the army he acted in that belief. In answer to requests of the commanders for guidance in their enforcement he had to give many instructions, and these were notable for their patriotism and common sense. Between parties and factions, between men swayed by passion and unreason he was a moderator and his natural reticence and impassiveness helped him to play his difficult part. Wade said that "he had often tried to find out whether Grant was for Congress or for Johnson or what he was for but never could get anything out of him for as quick as he'd talk politics Grant would talk horse."<sup>3</sup> While Grant said

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<sup>1</sup> *Life of Chase*, Warden, p. 670 ; *post*.

<sup>2</sup> *The Nation*, Aug. 1, 1867, p. 81, Oct. 17, p. 306, Dec. 19, p. 494 ; *Sherman Letters*, p. 293 ; *Life of Thurlow Weed*, vol. ii. p. 458 ; *Pierce's Sumner*, vol. iv. p. 357.

<sup>3</sup> Interview with a correspondent of the *Cincinnati Commercial*. *The Nation*, Nov. 14, 1867, p. 386.

little he was thinking much of how things had gone awry and he gave expression to this thought in a letter to Stanton of July 24, 1867, "For myself," he wrote, "my health does not require rest but I have got so tired of being tied down that I am nearly ready to desert. Things might so easily have been different now and given repose to the country and consequently rest to all interested in administering the laws."<sup>1</sup>

Johnson set himself to work to persuade Grant to take the position of Secretary of War, feeling probably that the country would not stand the removal of Stanton unless its most popular man was put in his place. A letter of Grant to Johnson of August 1 shows how loath he was to step into the breach. "I take the liberty of addressing you privately on the subject of the conversation we had this morning," he wrote, "feeling as I do, the great danger to the welfare of the country, should you carry out the designs then expressed. On the subject of the displacement of the Secretary of War, this removal can not be effected against his will without the consent of the Senate. It was but a short time since the United States Senate was in session, and why not then have asked for his removal if it was desired? It certainly was the intention of the Legislative branch of the Government to place a Cabinet Minister beyond the power of Executive removal, and it is pretty well understood that so far as Cabinet Ministers are affected by the terms of the Tenure-of-Office bill, it was intended specially to protect the Secretary of War, whom the country felt great confidence in. The meaning of the law may be explained away by an astute lawyer, but common sense and the views of the loyal people will give to it the effect intended by its framers."<sup>2</sup>

But the President prevailed over Grant, who, from the highest motives and at the risk of being miscon-

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<sup>1</sup> Life of Stanton, Gorham, vol. ii. p. 375.

<sup>2</sup> House Ex. Doc. 40th Cong. 2d Sess., No. 57, p. 1.



strued,<sup>1</sup> decided to lend himself to Johnson's wishes feeling probably that if he did not take the office some one less acceptable to the country would be named. On August 12, the President sent word to Stanton that he was suspended from the office of Secretary of War and directed him to transfer all records, books etc. to General Grant, who had been appointed Secretary of War *ad interim*. A letter of the President to Grant notifying him of his appointment, a kind letter of notification from Grant to Stanton, a protest of Stanton to the President denying his legal right "to suspend me from office" and ending "I have no alternative but to submit under protest to superior force," and a letter of similar tenor to Grant, complete the official correspondence.<sup>2</sup>

With the suspension of Stanton Johnson did not stay his hand. Sheridan, who was not his own choice for commander of the district comprising Louisiana and Texas, had "rendered himself exceedingly obnoxious" to Johnson by his rule of "absolute tyranny." His characterization of Stanbery's opinion (which I have quoted) and his further remark that the President was in "bitter antagonism" to the Reconstruction Acts seemed to Johnson "insubordination," and he determined on his transfer to another post. On August 1 Grant protested earnestly against the removal of Sheridan, four days later Chase advised against it, every member of the Cabinet was of the same mind as the General and Chief Justice, but Johnson persisted.<sup>3</sup> On August 17, Grant being now Secretary of War *ad interim*, the President, in sending him the order for issuance, said

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<sup>1</sup> *The Nation*, Aug. 8, 15, 22, 19, pp. 101, 121, 141, 161; Life of Grant, Garland, p. 367.

<sup>2</sup> These letters are all dated Aug. 12. Trial, vol. i. p. 148; House Ex. Doc. 40th Cong. 2d Sess., No. 57; Report of Secretary of War *ad interim*, Nov. 1867; McPherson, p. 261.

<sup>3</sup> House Ex. Doc. 40th Cong. 2d Sess., No. 57, p. i; Life of Chase, Warden, p. 669.

he would be pleased to hear any suggestions regarding the transfer. Grant in a letter full of respect for the President said: "I earnestly urge in the name of a patriotic people who have sacrificed hundreds of thousands of loyal lives and thousands of millions of treasure to preserve the integrity and union of this country that this order be not insisted on. It is unmistakably the expressed wish of the country that General Sheridan should not be removed from his present command. This is a republic where the will of the people is the law of the land. I beg that their voice may be heard. General Sheridan has performed his civil duties faithfully and intelligently. His removal will only be regarded as an effort to defeat the laws of Congress. It will be interpreted by the unreconstructed element in the South — those who did all they could to break up this Government by arms, and now wish to be the only element consulted as to the method of restoring order — as a triumph. It will embolden them to renewed opposition to the will of the loyal masses believing that they have the Executive with them."<sup>1</sup> This ought to have moved Johnson but it failed to do so: he replied to Grant in a controversial tone. Thomas was assigned to Sheridan's place but, on account of his ill health, his assignment to New Orleans was suspended and Hancock was appointed in his stead.<sup>2</sup> Eleven days after the suspension of Stanton and six after the removal of Sheridan [August 23] Seward resigned his position of Secretary of State. The differences between the President and Stanton were "peculiarly distasteful" to him and they may have led to his resignation. It was not accepted and Seward remained at the head of the Cabinet until the end of Johnson's administration.<sup>3</sup>

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<sup>1</sup> House Ex. Doc. 40th Cong. 2d Sess., No. 57, p. 4.

<sup>2</sup> Ibid., No. 57, p. 6.

<sup>3</sup> Johnson papers, MS., Library of Congress; Life of Seward, F. W. Seward, vol. iii. p. 354. The private papers of Johnson, in which Seward's letter is

One other act much less important than the displacements of Stanton and Sheridan manifested Johnson's obstinacy. Sickles, commander of the district of North and South Carolina, had fallen under the displeasure of the President, his conduct of affairs being thus described by the Attorney-General: "He places himself on a higher ground than the President who is simply an executive officer. He assumes directly or indirectly all the authority of the State legislative, executive and judicial and in effect declares 'I am the State.'"<sup>1</sup> Sickles was removed [August 26] and Canby assigned to his place.<sup>2</sup>

The fatuity of Johnson in removing Stanton and Sheridan was in line with his previous conduct and might indeed have been expected. When his personal animosity was aroused, he would not accept the disinterested advice of those best qualified to give it. He utterly failed to see things as they were. And he acted as if he had the country at his back, though in fact he had no support whatever. The Democrats had little respect for Johnson although they were willing to use him as a

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found, do not disclose (so far as the search which D. M. Matteson made for me extended) the reason of his resignation. It was either on account of the Stanton matter or on account of the great pressure on the President, especially from Democrats, for a reconstruction of his cabinet in which the displacement of Seward bore a prominent part. For example Montgomery Blair wrote to Johnson Aug. 26, enclosing a letter from W. B. Reed of Philadelphia, about letting Seward go, and having a cabinet of friends, and added, "this expresses the feeling of every friend you have in the country." F. P. Blair, Sr. wrote Sept. 7: "Weed and Seward still have their hands in the Gov't. . . . Would it not be a deliverance if the Premier were sent abroad as a plenipotentiary. . . . Your fate is nothing to him. He wants to raise himself and cares not if it be at your expense." — Johnson Papers, MS.

<sup>1</sup> Opinion of June 12.

<sup>2</sup> Sickles demanded a Court of Inquiry and Grant recommended it, but the President refused to grant it. He endorsed on the application, "For reasons which were deemed conducive to the public interests and necessary to the proper administration of justice within the Second Military District Major-General Sickles was relieved from his command and all that has since occurred, it seems to me, has confirmed the propriety of the change." Johnson Papers, MS.

means to injure their party antagonist. The Southern people were coming to look upon him as an impotent friend. The essential fact was that Congress governed the country and was sustained by public sentiment at the North. So far as the policy of reconstruction was concerned, Congress had pretty nearly reduced the President to impotence; the execution of their acts was in the purview of the War Department; and the General of the Army, and later Secretary of War *ad interim*, sympathized with their aims. Threats of impeachment were continually heard and it was evident that the Republican majority would give a liberal construction to the term "high crimes and misdemeanors" on the conviction of which the President might be removed from office. Congress moreover had by their pervasive influence and threats apparently silenced the Supreme Court so far as a judgment on their Reconstruction Acts was concerned. Johnson should either have resigned or accepted the situation and become in fact a *roi fainéant*. Instead of which, after acting with discretion for a number of months he broke away from his wise advisers and did things which exasperated his enemies and caused them to rivet the chains on the South. True enough, as after events have shown, Johnson stood for some correct principles, but he had the knack of doing even right things in the wrong way, so that all his salutary action came to naught and the Southern people might well have exclaimed, Defend us from such a friend.

The situation after March 4, 1867 must have been almost intolerable to both Johnson and Stanton. According to McCulloch, if Stanton had acted in accordance with his own judgment he would have resigned, but the Republican majority in Congress and the country told him to "stick" and he obeyed that voice.<sup>1</sup> So confused was the political atmosphere that Stanton and

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<sup>1</sup> Men and Measures, pp. 391, 403.



his radical friends had convinced themselves that the welfare of the country depended on his remaining at his post<sup>1</sup> — a lame judgment as the administration of the War Department by Grant and later by Schofield demonstrated. But if Stanton would not resign it was Johnson's place to give way for the reason that the Secretary of War represented the Republican majority in Congress. The removal of Sheridan also exasperated Congress and the Republican party at large; it received some months later this word of disapproval from the House of Representatives, "Resolved that this House utterly condemns the conduct of Andrew Johnson for his action in removing that gallant soldier Major-General P. H. Sheridan."<sup>2</sup>

Crushed at the close of the war the Southern people had been touched by the generosity of Grant at Appomattox. Their hopes weakened for a time by Johnson's threats were later revived by his liberal terms of reconstruction. "Every one approves of the policy of President Johnson," wrote Robert E. Lee July 9, 1866, "gives him his cordial support and would I believe confer on him the presidency for another term if it was in his power."<sup>3</sup> But the requirement by the North of one section of the Fourteenth Amendment for the disfranchisement from office of their leaders was an unpleasant awakening for the Southern people and led them to reject the first offer of Congress too hastily and with too little consideration. And now, stunned by the immediate consequence of this action, the harsh Reconstruction Acts of March 2 and 23, they again lost hope. They could expect no further aid from the Executive but, being essentially a law-abiding people, they made an appeal to the Supreme Court. Mississippi [April 1867] through counsel asked leave to file a bill praying the United States Supreme Court to enjoin Andrew John-

<sup>1</sup> See letters to Stanton, *Life* by Gorham, vol. ii. p. 400.

<sup>2</sup> Jan. 6, 1868, *Globe*, p. 333.

<sup>3</sup> *Personal Reminiscences of Lee, Jones*, p. 216.

son perpetually from executing the Reconstruction Acts. The Court by apparently a unanimous voice through the mouth of the Chief Justice denied the request for want of jurisdiction.<sup>1</sup>

Before this opinion was handed down Governor Jenkins<sup>2</sup> of Georgia, who had sat on the Supreme Bench of his State, had gone to Washington determined to apply to the Supreme Court for the relief of Georgia. His expectation is plainly seen from the address he issued to his people [April 10]. "In the federal government there are three departments," he said. "Two of them have passed upon these measures and are in direct antagonism regarding their constitutionality. But in that event the Constitution gives to the legislative department power to override the executive and they have so done. There still remains however the judicial department — the great conservator of the supremacy of the Constitution<sup>3</sup> — whose decrees unlike the executive veto cannot be overridden by the Congress. That department has not yet spoken. Should it be found in accord with the executive this usurpation will be arrested. Then, although for a time you may be denied representation in Congress, your State government will remain intact."<sup>4</sup> To avoid a palpable legal objection the suit was brought against Stanton, Grant and Pope (the commander of the district in which Georgia was situated) and the Court was asked to enjoin them against enforcing the Reconstruction Acts. Able counsel were employed, among them Jeremiah S. Black and Charles O'Connor, and O'Connor made one of the arguments, but

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<sup>1</sup> 4 Wall. 475 ; Dunning, p. 136 ; Reconstruction in Miss., Garner, p. 158. This book will hereafter be referred to as Garner ; Opinion of Attorney-General, June 12 ; *The Nation*, April 18, p. 306. The opinion is dated April 15, 1867.

<sup>2</sup> As to Jenkins personally see vol. v. pp. 539, 560.

<sup>3</sup> Elsewhere he speaks of it as "that august tribunal, hitherto true to the Constitution — the bulwark of our liberties."

<sup>4</sup> Sen. Doc. 40th Cong. 1st Sess., Doc. No. 14, p. 100.

the Supreme Court again likewise decided that it possessed no jurisdiction [May 1867].<sup>1</sup>

The Supreme Court had acted with great prudence. Had the cases of Mississippi and Georgia been considered on their merits little doubt can exist, to argue from the decision of the Court in the Milligan case the preceding December, that a majority of the judges would have pronounced the Reconstruction Acts unconstitutional. Current gossip had it that such was the belief of five of the nine judges and, had such a decision been rendered, the Constitution already strained would have been put to a severer tension. One thing is sure: the Republican majority in Congress and among the Northern people was determined to have its way and would no more be stopped by legal principles and technicalities than it had been by the President's vetoes. The unanimous concurrence of the Court therefore in the cogent reasoning of Chief Justice Chase is an example of sound wisdom and discretion, which manifests the readiness of American lawyers for any crisis. Chase's words at the end of the opinion of the Court in the Mississippi case, and preceding the announcement that the relief prayed for was denied, so touch fundamental principles that a perusal of them will throw light upon the history of the time.

"The Congress is the legislative department of the government," he said, "the President is the executive department. Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance. The impropriety of such interference will be clearly seen upon consideration of its possible consequences. Suppose the bill filed and the injunction

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<sup>1</sup> 6 Wall. 50; Reconstruction and the Constitution, Burgess, p. 146; History of Georgia, Avery, pp. 366-369; *The Nation*, May 2, 16, pp. 345, 385. The decision was handed down May 13, 1867, and the opinion was read Feb. 10, 1868.

prayed for allowed. If the President refuse obedience, it is needless to observe that the court is without power to enforce its process. If, on the other hand, the President complies with the order of the court and refuses to execute the acts of Congress, is it not clear that a collision may occur between the executive and legislative departments of the government? May not the House of Representatives impeach the President for such refusal? And in that case could this court interfere, in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public world of an attempt by this court to arrest proceedings in that court?"<sup>1</sup>

The promptitude of the Supreme Court left the way clear for the War Department, the General of the Army and the commanders of the five districts to enforce the Reconstruction Acts. Their main purpose was to substitute State governments, based on negro enfranchisement and a considerable white disfranchisement, for those which had been constructed on the prompting of Johnson; but during the interregnum many questions came before the commanders to decide and they exercised executive, legislative and judicial duties. The South after the end of the war approached social demoralization. Industrial ruin meant that her disbanded soldiers, in far different case from those at the North, were often unable to find employment in legitimate fields; thus the incitement to crime was great. The negroes freed from the restraint of slavery developed criminal propensities which ran chiefly to larceny. None of the generals had a large military force<sup>2</sup> and their

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<sup>1</sup> 4 Wall. 500.

<sup>2</sup> According to the Adjutant-General's report for Sept. 30, 1867 (H. E. D., 40th Cong. 2d Sess., No. 1, vol. ii. part i. pp. 460, 462, 464, 466, 468, 470) the number of troops stationed in the South was as follows:—



action for the suppression of crime was exerted by prompting the local authorities and police. Congress was insistent for the protection of negroes and "loyalists" and this was looked after more or less zealously according to the personal disposition of the several commanders. County and city officials, magistrates and police were removed for cause and others appointed in their place. Sheridan displaced the governors of Louisiana and Texas and, considerably later, Meade removed Governor Jenkins of Georgia and assigned one of his generals to that office. Occasionally cases were taken from the civil courts and tried by military commissions. General Ord in Mississippi specifically provided that the crime of horsestealing should be so disposed of. Sickles regulated the sale of liquor and ordered that in public

		NO. OF MEN (aggregate)	NO. OF PLACES OCCUPIED
Under Thomas (Tenn., Ky., W.Va.)	. . . . .	2,087	17
Under Schofield (Va.)	. . . . .	2,529*	12
Under Canby	{ N.C. . . . .	1,203	11
	{ S.C. . . . .	1,879†	12
	{ Staff . . . . .	7	
Under Pope	{ Ga. . . . .	1,185‡	6
	{ Fla. . . . .	1,087§	9
	{ Ala. . . . .	1,022	7
	{ Staff . . . . .	9	
Under Ord	{ Miss. . . . .	1,897¶	14
	{ Ark. . . . .	1,548**	11
	{ Staff . . . . .	7	
Under Hancock	{ Texas . . . . .	4,722††	37
	{ La. . . . .	2,434‡‡	14
	{ Staff . . . . .	11	
Total (excluding Thomas's force)		19,320	

These were all regulars, all the volunteers except 203 commissioned officers had been mustered out. The total strength of the army on Sept. 30, 1867, was 56,815, so that 34% of it was in the five military districts. Many of those in Texas were probably on regular frontier duty.

\* 1,081 at Richmond.

† 426 at Charleston.

‡ 497 at Atlanta.

§ 322 at Fort Jefferson.

|| 843 at Mobile.

¶ 269 at Vicksburg, 242 at Jackson, 256 at Granada.

\*\*301 at Little Rock.

†† 455 at Brownsville.

‡‡ 1021 at New Orleans.

This note was written for me by D. M. Matteson.

conveyances there should be no discrimination on account of colour.

Economic demoralization was likewise a marked feature of the situation. Nature seemed to frown upon the Southerner, and legislation completed his discomfiture. The cotton crop of 1866 was poor, and yet, owing to the large production in India which had been stimulated by the high war price of the staple, its value had fallen materially. Then Congress laid a tax on it of three cents per pound and allowed no drawback on cotton which was exported.<sup>1</sup> This state of things together with the instability of the government, fostering as it did partisan and sectional feeling, operated to prevent an important means of recuperation at the South. Tempted by the low price of land and high price of cotton at the end of the war, there was an influx of Northern settlers mostly Union soldiers, who brought some capital and much energy; but they knew nothing about the culture of cotton, they could neither brook the unreliability of the negro labourer nor live down the social aversion of the Southern people, and their only result was the loss of their money. In the spring of 1867, the South was in a state of agricultural and industrial distress and what little recovery there had been since the close of the war was neutralized by the unsatisfactory political conditions. "The whole South is settled and quiet," wrote June 23, 1867, Frances Butler (a young woman who had been North during the war and went South in March 1866 with her father to look after their property) "and the people too ruined and crushed to do anything against the Government, even if they felt so inclined and all are returning to their former peaceful pursuits trying to rebuild their fortunes and thinking of nothing else. Yet the treatment we receive

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<sup>1</sup> Act of July 13, 1866. By the Act of March 2, 1867 the tax was made 2½¢ after Sept. 1. For the production and price see *The Nation*, Dec. 5, 1867, p. 446.

from the Government becomes more and more severe every day. . . . The one subject which Southerners discuss whenever they meet is, 'What is to become of us?'"<sup>1</sup> The complaints of debtors in North and South Carolina so affected Sickles that by a general order he enacted a stay law and abolished imprisonment for debt.

Military government at the South may be described as possessing all powers and no responsibilities. Yet the American soldier's education and political environment prevented him from being an autocrat; and it is a curious circumstance that in this so-called military despotism the press and public speech were, with two or three insignificant exceptions, absolutely free. Sheridan came the nearest to failure because of his fixed prepossession that the Southerners could not work out their own problem but it must be confessed that he had a difficult district. New Orleans was a turbulent city and Louisiana an unruly State, while the civilization of Texas was only that of the frontier. His impulsiveness, which frequently got him into trouble, was perhaps responsible for the breach of official propriety in allowing his famous despatch to Grant (which I have previously referred to) to be published in the newspapers of New Orleans and New York before it was communicated officially to the President.<sup>2</sup> Sheridan was talked of as one of the possible Republican candidates for President next year and a Democratic representative charged him with having the disease of "President on the brain."<sup>3</sup> Despite the dissatisfaction

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<sup>1</sup> Ten years on a Georgia Plantation, F. B. Leigh, pp. 66-71.

<sup>2</sup> As late as Aug. 5 Johnson complained that he had not received it. *Life of Chase*, Warden, p. 669.

<sup>3</sup> July 9, 1867, *Globe*, p. 545; *The Nation*, Aug. 1, 1867, p. 81; Appletons' Annual Cyclopædia, 1867, p. 761. July 5, the House of Representatives voted him thanks "for his able and faithful performance of his duties." *Globe*, p. 500. July 25, Johnson asked General Rousseau by telegraph, "How does

with Sickles in Washington, he got on well with his two governors who had been elected under the Johnson plan of reconstruction.<sup>1</sup> There is little fault to be found with Pope's administration [Georgia, Florida and Alabama],<sup>2</sup> less with Ord's [Mississippi and Arkansas] and Schofield's [Virginia] could not have been bettered.<sup>3</sup> On the whole it may be affirmed that little hardship came from the military sway of itself. The South of course chafed under it as she believed she was entitled to home rule, but the great and just cause for her irritation came from the preparation for her future government which the generals were enjoined to make.<sup>4</sup>

The first step was the registration of voters. The generals appointed boards of registry consisting of three men; in Mississippi Ord assigned one board to each county, in other States the districts were smaller. The meaning of the Reconstruction Acts in regard to the blacks was entirely clear: they intended to enfranchise every negro man who was "twenty-one years of age and upwards." But in regard to the disfranchisement they were not so precise. Questions as to who among the whites were disfranchised continually arose, calling for many inquiries from the generals and instructions from Grant and Stanton. The radical spirit of Congress was behind all these instructions, insistent on the exclusion

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matters look in Louisiana?" Rousseau replied that the almost universal feeling towards Sheridan was one of intense bitterness. "It is firmly believed and not doubted here that all he has done and desired to do was in view of the presidency." Johnson Papers, MS.

<sup>1</sup> Partially confirmatory is Hollis, *Early Period of Reconstruction in S.C.*, pp. 66-69.

<sup>2</sup> Contrariwise, see Fleming, pp. 479-487, 509.

<sup>3</sup> See Eckenrode, p. 106.

<sup>4</sup> My authorities are Sen. Ex. Doc. 40th Cong. 1st Sess., No. 14; House Ex. Doc. 40th Cong. 2d Sess., No. 342, also No. 1, vol. ii. part i.; Sen. Ex. Doc. 40th Cong. 2d Sess., No. 30; Schofield, *Forty-six Years*; Dunning; Garner; Appletons' *Annual Cyclopædia*, 1867; Report of Secretary of War, 1868.



of all men of prominence who had been in political parlance "disloyal" in the past. All who were not shut out by this process must on applying to be registered "solemnly swear (or affirm) that I have not been disfranchised for participation in any rebellion or civil war against the United States . . . that I have never been a member of any State legislature, nor held any executive or judicial office in any State and afterward engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States or as an officer of the United States or as a member of any State legislature or as an executive or judicial officer of any State to support the Constitution of the United States and afterward engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof." The Act of July 19 further provided that no executive pardon or amnesty should qualify any one for registration and voting.

This legislation was an effective expedient for enfranchising ignorance and disfranchising intelligence. It provided that the most degraded negro could vote while Robert E. Lee, Wade Hampton, Alexander H. Stephens and Governor Joseph E. Brown could not. But it was in exact line with the theory which prevailed in the Republican party. "Loyalty must govern what loyalty preserved," declared Colfax<sup>1</sup> and that was the sentiment which prompted these acts. It followed that an ignorant Congo negro was a better citizen for the upbuilding of the new State than a man of the highest intelligence and largest political experience, who had sided with the Confederacy. Obviously this view was more partisan than patriotic. It may be impossible to deny that the Reconstruction Acts subserved the interest of the Re-

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<sup>1</sup> "You got it all into one sentence," said Senator Chandler to him. — *Life of Chandler*, p. 292.

publican party, if retention of power is always the best thing for a party; but the enthronement of ignorance at the South turned out grievously for the country at large. The theory of the legislation was as false as the practice was demoralizing. The addendum to the oath which I have cited is the only oath that should have been required; it should have been strictly exacted as a condition of registration but only those who understood the words and comprehended their full meaning should have been allowed to take it. "I will faithfully support the Constitution," the oath continued, "and obey the laws of the United States and will, to the best of my ability, encourage others so to do, so help me God." Absolutely without meaning to the plantation and field hands of the South those words in the mouths of Robert E. Lee, Alexander H. Stephens and their like would have been an earnest of future loyal and faithful service to the Union. The private letters, public speeches and sworn testimony of the leading men of the South fully support this statement and show what they had determined on as their future course.

But the taking of the oath was not conclusive of the right to register. The board of registry could go behind the oath. This was considered a matter of importance by Stanbery and by Congress but I have not been able to appreciate the stress they laid upon it. No Southern gentleman would take the oath unless he could do so honestly. Some men among the poor whites, the "border ruffian" class and social outcasts would of course swear falsely if necessary, but few if any of these could have come within the disfranchising provisions of the law; and we may suspect that the false swearing of those intending to vote on the Republican side would be winked at. On the theory of having none but the "truly loyal" hold office the boards of registry were effectively partisan. Every member of them was required to take the "iron-clad oath" and no one could take it who had given

“voluntary support” to the Confederate States.<sup>1</sup> The generals found difficulty in constituting their boards. The great mass of the electorate could not be utilized; few of the negroes knew how to read and write. The commanders therefore appointed military officers, Freedmen’s Bureau agents, ex-Union soldiers, who had settled at the South since the close of the war, and some freedmen.

The registration was completed by October 1 and owing to the zeal of the generals was successful as to numbers but naturally not as to quality. No such mass of political inexperience, of childish ignorance, — no such “terrible inert mass of domesticated barbarism”<sup>2</sup> was ever before in our country called upon to exercise the suffrage. In five of the States, South Carolina, Florida, Alabama, Mississippi and Louisiana the negroes outnumbered the whites; in Georgia the races were almost even; in Virginia, North Carolina, Texas and Arkansas the white voters were in the majority.<sup>3</sup> Over 700,000 negroes, most of whom only three years before had been slaves, were given the right to vote.<sup>4</sup> The number of white men disfranchised was estimated by the several commanders at about 16,000 for Virginia, 12,000 for North Carolina, 8000 for South Carolina and

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<sup>1</sup> This oath ran as follows: “I . . . do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel or encouragement to persons engaged in armed hostility thereto; that I have never sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto; and . . . that . . . I will support and defend the Constitution of the United States against all enemies, foreign and domestic,” etc., etc.

<sup>2</sup> C. F. Adams, Jr., *Atlantic Monthly*, April 1861, p. 454, expression applied to the “servile population.”

<sup>3</sup> I have estimated the coloured registration in Mississippi and Arkansas on the basis of the population of 1860.

<sup>4</sup> The following gives the number of voters registered: —

10,500 for Georgia<sup>1</sup> but no especial weight was attached to these estimates. Everybody knew however that the highest social class—the men of brains, character and experience—were disfranchised while the lowest of the low were given a vote. Of the whites, considered apart, the illiterate were admitted, the intelligent excluded. The political note of the South before the war was leadership and this it was the aim of the Reconstruction Acts to destroy; but, though the prominent men had less desire to exercise their influence than if they had not been disfranchised, many of them came forward and gave advice to the voters. The first impulse was to counsel against registration, so as not to accept the law in any way, but on consideration such a course was deemed unwise. The Act of March 23 provided that no convention should be held and no constitution should be

	WHITES		COLOURED
Virginia . . . . .	120,101		105,832
North Carolina . . . . .	106,721		72,932
South Carolina . . . . .	46,882		80,550
Georgia . . . . .	96,333		95,168
Alabama . . . . .	61,295		104,518
Florida . . . . .	11,914		16,089
Mississippi . . . . .		TOTAL	
Arkansas . . . . .		139,690	
Louisiana . . . . .	45,218	66,831	84,436
Texas . . . . .	59,633		49,497

These figures were compiled for me by D. M. Matteson and agree with the table in Dunning, p. 188. Although no distinction of colour was made in the registration in Mississippi and Arkansas it is well known from the population of the States that the majorities were as stated in the text. Reynolds, *Reconstruction in South Carolina*, gives slightly different figures for his State, p. 73. This book will be hereafter referred to as Reynolds. Fleming's figures for Alabama agree, p. 538.

<sup>1</sup> According to Matteson's compilation which differs slightly from Dunning's statement, p. 189.



ratified unless at least one-half of the registered voters should vote on these questions and it was seen that this provision fell in with the aim of the Southern extremists which was well stated in a speech of Benjamin H. Hill of Georgia :<sup>1</sup> " I advise you to register," he said. " There is no dishonor in that. It is arming yourself with an important power to be wielded against the nefarious scheme, but don't vote for a convention — don't go for anything which is an assent to the scheme but be against it at every step." To the argument which was based on fear, he said : " But you say you are in favor of going into the Union because if you do not your property will be confiscated. A gentleman of this city a few days ago said to me that he was in favor of the acceptance of these military bills because he thought it the best we could do. I said to him ' You do not say that for yourself but for your brick stores ! ' But you are not half so wise as you are knavish ! . . . Confiscation is a war power . . . Confiscation in time of peace is neither more nor less than robbery." Herschel V. Johnson in a public letter took the same view. The whites are largely in the ascendancy in Georgia,<sup>2</sup> he urged and if they are firm and united they can defeat the nefarious scheme. Confiscation is threatened but this is impossible under the forms of law ; but if Congress does try it, it will hurt only those who have property and the true men of the South have little to confiscate. I am indifferent to the probable effect of not accepting reconstruction. " Who cares for such representation as will be foisted upon the people under its operation ? . . . Much as I deprecate military government it is far preferable to such a government as will probably be inaugurated under " the Reconstruction

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<sup>1</sup> Speech at Atlanta, July 16, 1867. Life of B. H. Hill, B. H. Hill, Jr., pp. 299, 305.

<sup>2</sup> According to the census of 1860, Georgia had 591,588 white, 3500 free coloured, 492,198 slave.

Acts. I hope that every man who can will register with a view of voting down a call for a convention. The dominant party desires the *consent* of the people to the reconstruction plan so that they can insist that whatever was irregular had been cured by our consent and all unconstitutionality waived thereby. "Then the door of redress in every form will have been forever closed." The fact of registering does not lend consent but it is the *ratification* of the Constitution that does so.<sup>1</sup>

The next move in the process of reconstruction was elections to decide whether or not conventions should be held and at the same time to choose delegates to them. Such elections were held in all the States except Texas during the autumn of 1867 and in Texas in February 1868. In every State, a convention was ordered and delegates chosen.<sup>2</sup> The negroes with practical unanimity voted

<sup>1</sup> Letter of July 19, 1867. Abstract made by D. M. Matteson from a pamphlet letter in the Boston Public Library. This letter was written in response to a request from citizens of Atlanta. Life of Brown, Fielder, p. 438.

## 2 VOTE ON HOLDING A CONVENTION

	FOR			AGAINST			REGISTERED BUT NOT VOTING	
	White	Coloured	Total	White	Coloured	Total	White	Coloured
Virginia	14,835	92,507	107,342	61,249	638	61,887	44,017	12,687
N.C.	31,284	61,722	93,006	32,961		32,961	42,476	11,210
S.C.	2350	66,418	68,768	2278		2278	42,354	14,132
Georgia	32,000	70,283	102,283	4000	127	4127	60,333	24,758
Alabama	18,553	71,730	90,283	5583		5583	37,159	32,788
Florida	1220	13,080	14,300	203		203	10,491	3009
							TOTAL	
Miss.			69,739			6277	63,674	
Ark.			27,576			13,558	25,697	
La.			75,083			4006	50,480	
Texas	7757	36,932	44,689	10,622	818	11,440	41,234	11,730

This table was compiled by Matteson. See also Dunning, p. 188. Reynolds's figures for South Carolina differ somewhat, p. 74 ; Fleming's for Alabama, agree, p. 491.

“for a convention,” the white men largely against one. The white abstentions were greater than the coloured.<sup>1</sup>

Not all the Southern leaders agreed with Hill and H. V. Johnson and among those who dissented from the majority was the greatest, Robert E. Lee. “I think,” he wrote in a private letter May 23, 1867, “it is plain in the execution of the laws, that a convention will be called and a State constitution formed. The question then is, shall the members of the convention be selected from the best available men in the State or from the worst? Shall the machinery of the State government be arranged and set in motion by the former or by the latter? In this view of the case I think it is the duty of all citizens not disfranchised to qualify themselves to vote, attend the polls and elect the best men in their power. . . . When the convention assemble it will be for them to determine what, under the circumstances of the case, it will be best for the people to do, and their decision should be submitted to by all as the decision of the State.”<sup>2</sup> A mistaken sense of propriety arising from high motives prevented his giving this advice publicly to the citizens of his State; on the other hand he expressly requested in two of the letters which he wrote on this subject that they should be considered as private.<sup>3</sup> Lee’s close companion in arms, Longstreet, went further. The decision of the sword, he wrote in a public letter of advice to the citizens of Louisiana “was in favor of the North, so that her construction becomes

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<sup>1</sup> My authorities are Sen. Ex. Doc. 40th Cong. 1st Sess., No. 14 ; House Ex. Doc. 40th Cong. 2d Sess., No. 342 ; *ibid.*, 40th Cong. 1st Sess., No. 34 ; *ibid.*, 40th Cong. 2d Sess., No. 1, vol. ii. part i. ; *ibid.*, 40th Cong. 3d Sess., No. 1, vol. iii. part i. ; Sen. Ex. Doc. 40th Cong. 2d Sess., No. 1, vol. ii. part i. ; *ibid.*, No. 53 ; Ku-Klux-Klan report, vol. vi. (Ga.) ; Dunning ; Garner ; Reconstruction and the Constitution, Burgess ; Reconstruction of Georgia, Woolley.

<sup>2</sup> Personal Reminiscences of Lee, Jones, p. 226, also p. 225 ; Life of Brown, Fielder, p. 536.

<sup>3</sup> *Ibid.*, also Jones, pp. 228, 233 ; see also Recollections and Letters of R. E. Lee, by his son, p. 299.

the law and should be so accepted." The Reconstruction Acts and Fourteenth Amendment "are the only peace offerings they [the Northern people] have for us and should be accepted as the starting point for future issues."<sup>1</sup>

Of the men of action and influence at the South the most far-seeing was Joseph E. Brown. While the Reconstruction Acts were pending, in February 1867, he paid a visit to Washington and, after a conference with men of both parties of varying shades of opinion, he came to the conclusion that, as the South must accept what was offered she had better do so quickly. Returning home to Georgia he advocated this policy emphatically, coming into bitter conflict with Hill, an old political antagonist, who had behind him the opinion of the best people and of the press. Brown risked the loss of his great popularity and even social and political ostracism but his course seemed so clear that he never faltered, and urged vehemently that the South could work out her own salvation by a compliance with the laws imposed upon her by the Radicals. He carried with him 32,000 voters mostly from the northern part of the State who voted for a convention and for delegates to it. Although out of a total of 170, this convention contained 33 negro members chosen from the "black belt," where the white men refrained from voting, there were also a number of intelligent and conscientious Democrats and Republicans, who, with the powerful assistance of Brown and others outside of their body, secured a good Constitution. Unlike the organic instruments, which had been adopted or were being adopted by six of her sister Southern States, her constitution disfranchised no white man: of course it provided for universal negro suffrage.<sup>2</sup>

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<sup>1</sup> From *Manassas to Appomattox*, p. 636. See Lee's Letter to Longstreet, Jones, p. 227.

<sup>2</sup> See *Life of J. E. Brown*, Fielder, pp. 428, 531; *History of Georgia*, Avery, p. 363 *et seq.*; Dunning, p. 194, note 1; the constitution is printed entire by Poore and an abstract is given by McPherson. The convention met Dec. 8, 1867, and adjourned March 11, 1868.



The North Carolina convention under similar influences adopted a constitution which provided for 'no white disfranchisement.'<sup>1</sup> Neither Georgia nor North Carolina rendered any one ineligible to office although of course the disqualifications of the Fourteenth Amendment, and the other acts of Congress applied to these States. Similar were the provisions of South Carolina and Florida, where the negroes were in the ascendant and where the white men abstained from voting. The conventions of the other six States adopted harsh provisions for disfranchisement from voting and from holding office and some of them required stringent oaths: they were aimed at the prominent secessionists and those who, though backward at first, had gone with their States, the men of intelligence and virtue in these communities.<sup>2</sup>

Negroes were sent as delegates to the conventions in varying proportion. In Alabama they were about one-seventh of the whole, in Georgia one-fifth, in North Carolina one-ninth and in Virginia one-quarter while in South Carolina they outnumbered the whites there being 76 negroes out of a total of 124.<sup>3</sup>

<sup>1</sup> The North Carolina convention sat from Jan. 14 to March 16, 1868.

<sup>2</sup> Poore, Charters and Constitutions; McPherson; Dunning, p. 196.

<sup>3</sup> The following table gives the division in detail: —

	WHITE	BLACK		WHITE	BLACK
Virginia . . . . .	80	25	Florida . . . . .	28	18
North Carolina . .	107	13	Alabama . . . . .	92	16
South Carolina . .	48	76	Mississippi . . .	68	17
Georgia . . . . .	133	33	Texas . . . . .	81	9

Dunning, p. 194, note; for South Carolina, Reynolds, p. 78; Bancroft, *The Negro in Politics*, p. 19; Appletons' *Annual Cyclopædia*, 1867, p. 366; Garner, p. 187. I have been unable to find the division in the Louisiana convention. The *New York Tribune* speaks of a caucus just before the meeting of the convention of 44 negroes and 25 whites. Fortier in his *Louisiana*, vol. iv. p. 104, states that the negroes were in great majority. Fleming gives 18

In this connection it will be worth while to recall the rule at the North respecting negro suffrage. Only six States allowed the coloured man to vote. In 1865 Connecticut, Wisconsin and Minnesota refused him enfranchisement.<sup>1</sup> In the autumn of 1867 Minnesota repeated her denial, Kansas by a majority of nearly 9000 and Ohio by a majority of over 50,000 decided against extending the suffrage to the negro.<sup>2</sup> In April 1868 Michigan registered a like verdict.<sup>3</sup> In any State of the North if ever a negro had sat in a constitutional convention, or legislature, or even a city council, the case was exceedingly rare. But now at the South the former slaves had suddenly become an important factor at the ballot box and in the convention hall. In South Carolina seven-eighths of the negro voters could neither read nor write<sup>4</sup> and in the other nine States, making the computation as one community, the proportion of illiterates was greater.<sup>5</sup>

The negro members of the conventions were for the most part uneducated; only seventeen of those in the South Carolina body paid taxes.<sup>6</sup> As one bears in mind the ability, experience and legal learning represented

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negroes from Alabama, but says that the lists do not agree and that the colour of four or five men is in doubt (p. 517). Hollis gives for South Carolina, 51 whites, 73 negroes (p. 83). Eckenrode agrees with the Virginia figures but gives in a note another estimate of 24 negroes (p. 87). Regarding South Carolina, Reynolds writes, "The white men classed as Republicans were about equally divided as natives or newcomers—in the vernacular of the times, 'scalawags' or 'carpet-baggers.'"

<sup>1</sup> Vol. v. pp. 527, 554.

<sup>2</sup> McPherson; *Tribune Almanac*.

<sup>3</sup> Journal of the Michigan Convention, pp. 658–660. On Aug. 9, 1867, a resolution to submit separately the question of negro suffrage was voted down 52 : 27 and one to submit it as a part of the constitution was carried by 50 : 28. It was supposed that the new constitution was beaten on account of the negro suffrage clause. *The Nation*, April 23, 1868, p. 322.

<sup>4</sup> Bancroft, p. 17.

<sup>5</sup> This statement is based on the census of 1870. In the table of illiterates they are given as those who "cannot write."

<sup>6</sup> Reynolds, p. 79; Bancroft, p. 20, follows *The Nation*, March 28, 1872, p. 197, in giving the number as 13.

generally in the constitutional conventions of our several States he may well stand aghast as he regards the composition of these bodies which were to begin anew the work of reconstruction. Yet while many of their proceedings were grotesque and gave a foretaste of negro rule, the constitutions which they adopted were on the whole moderate, excepting the severe disfranchisement provisions and the re-affirmation of universal negro suffrage (which last however was mandatory). This moderation was due to the work of some substantial Southern men in the conventions who were able to guide them on incontrovertible points and to the moral influence of the generals, which was on the side of conservatism.<sup>1</sup>

The great mass of whites in Mississippi abstained from voting for delegates to the convention with the result that only 19 Conservatives were chosen. This body which was locally known as the "Black and Tan" convention contained 17 negroes of whom perhaps 8 were preachers, somewhat more than 20 carpet-baggers and 29 native Republicans who were called scalawags: these last two classes were white men.

The so-called carpet-baggers, many of whom had been Union soldiers, were attracted to the State by "dollar cotton" and cheap land. Their planting ventures had not been successful but under the new conditions there was chance for a livelihood in politics, which was open to them as they laboured under no disabilities. Some of them were honest men and endeavoured to do good work but others who were knavish have given their stamp to the whole class in all the other Southern States as well as in Mississippi. The first emigration from the North to the other cotton States was induced for the same reason as in the case of Mississippi and economic reasons had their part in bringing men also to the States which

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<sup>1</sup> Dunning, p. 195. An examination of the constitutions and a notice of the length of time they were in force supports this view.

did not grow the world-desired staple. But as the possibilities under the Reconstruction Acts developed, adventurers who had neither political nor social standing at the North, who could not have been elected a constable in any town or village, flocked to the South for the purpose of making what money they could out of politics. Their worldly goods, it was supposed, could all be carried in a carpet-bag, hence the derisive term. Added to the white carpet-baggers were mulattoes and negroes of the baser sort from the North, who were attracted by the political honey-pot, and became leaders of their more ignorant brethren. The scalawags were native whites or Northern men, living at the South before the war, and for the most part siding with the Confederacy, who became Republicans. Some of them were men of good character in private life, who worked in politics with corrupt materials for what they deemed the good of their section but those who gave the distinguishing features to their class vied in rascality with the bad carpet-baggers. The origin of the name was told by a Southern witness before the Ku-Klux-Klan Committee of Congress. "Southern men [*i.e.* Republicans]," he said, "we call scalawags. The name originated in a fellow being kicked by a sheep so that he died. He said he didn't mind being killed but he hated the idea of being kicked to death by the meanest wether in the whole flock — the scaly sheep. We mean by scalawag a meaner man than a carpet-bagger."<sup>1</sup>

The Mississippi convention was extravagant to say the

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<sup>1</sup> General James H. Clanton of Alabama, Minority Report, p. 297 ; see also Wade Hampton's explanation, Letter of E. L. Godkin to the London *Daily News*, Sept. 18, 1868. See Garner, pp. 135, 181, 413 ; Ten Years on a Georgia Plantation, Leigh, pp. 3, 80, 97, 110, 132 ; History of Georgia, Avery, p. 365 ; Letters of E. L. Godkin to London *Daily News*, Jan. 8, Sept. 2, 1868. As giving the experience of a carpet-bagger there may be read with profit "Yazoo or on the Picket Line of Freedom in the South — A personal narrative," A. T. Morgan (1884). As to the character of Morgan see Garner, p. 376, note 1.



least of it. Nothing interested the delegates so much at first as determining their own compensation *per diem* and rate of mileage. After they had fixed these at a liberal amount they were eager to prolong their session, and though working only three hours daily, they encroached on the domain properly belonging to a legislature. They showed eagerness to secure the different State and county offices and an aptitude for excessive taxation; they endeavoured to relieve the supposed suffering among the freedmen and requested the commanding general to abolish all debts created prior to April 28, 1865. Gillem, a native of Tennessee and a personal friend of Andrew Johnson, who had succeeded Ord as commander of the district, checked the convention as they moved out of their sphere when within his power: they were in session a number of weeks before they began the framing of a Constitution. The subject of qualifications for voting and for holding office was vital and the discussion of it began in February and lasted into April. [The convention assembled January 9, 1868.] The three sections devoted to this were passed by a good majority and provided a harsh measure of disfranchisement from voting and a severe test for office holders, their aim being to secure the offices for the carpet-baggers, scalawags and negroes, although it was expressly provided that the Confederate private soldier was not excluded from office unless he had voted for or signed the ordinance of secession. This costly body for the taxpayers of Mississippi adjourned May 18, 1868 after a session of one hundred and fifteen days being much the longest Constitutional convention ever held in the State.<sup>1</sup>

Alabama's convention assembled November 5, 1867. Between that day and the day of the adjournment of the Mississippi body, all of the States, to which the

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<sup>1</sup> The sittings of the different conventions were as follows: 1817, 39 days; 1832, 29 days; 1861, 23 days; 1865, 11 days; 1868, 115 days; 1890, 71 days. See Garner, p. 186 *et seq.*; Poore.

Reconstruction Acts applied except Texas, adopted constitutions based on universal negro suffrage. A new political experiment had begun. The next step under the law was the submission of the constitutions to the people for ratification and the election of State officers.

The fall elections of 1867 had a profound influence on Southern sentiment as well as on Congress. In October Pennsylvania went Democratic by a small majority. Ohio indeed elected a Republican governor, Rutherford B. Hayes, but his majority was less than 3000; a Democratic legislature was chosen and the negro suffrage amendment beaten by over 50,000. In November New York went Democratic by nearly 48,000. Everywhere the Republican vote was diminished and Republican majorities fell off.<sup>1</sup> It was by no means improbable that the Democrats might elect their next President.<sup>2</sup> "The danger now is," wrote John Sherman to his brother, "that the mistakes of the Republicans may drift the Democratic party into power."<sup>3</sup> The cause of their losses since the autumn of 1866 was threefold: the Republican policy of reconstruction and negro suffrage, the unsatisfactory state of business and the advocacy by Western Democrats of the payment of the principal of the 5-20 bonds in greenbacks. The first two were the potent influences in the East; all three in the West. But the result of the elections did not diminish the hold of the Radicals in Congress; on the contrary it consolidated the senators and representatives into support of the Reconstruction Acts as being party policy. The Moderates who had not liked them now defended them as accomplished facts. A large number of senators and representatives at the previous session had undoubtedly attacked the problem of reconstruction with the thought how best to serve their country; now the paramount

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<sup>1</sup> *Tribune Almanac*; the current numbers of *The Nation*.

<sup>2</sup> See a careful article in *The Nation*, Nov. 14, 1867, p. 395.

<sup>3</sup> *Sherman Letters*, p. 299.

sentiment seemed to be how best can it be made to serve the party. The two-thirds majority in Congress was safe until March 4, 1869. In the meantime it must be so used that a Republican President and Congress should be elected in 1868. There was no thought of turning back as a response to public sentiment. On the contrary, since the electoral votes of some of the Southern States might be needed, the laws which held out a promise of them must be fully executed and improved to that end. Hitherto the attitude of the Republican party had been one of delay in the admission of the Southern States to representation in Congress; now, on the other hand, the cry was to get them in as soon as possible, for with negro enfranchisement and white disfranchisement, Republican votes were in sight and to nurse them became the party policy. It must be understood that the Republican of December 1867 sincerely believed that the country and his party were synonymous terms. John Sherman a Moderate wrote that if the Democrats got into power "the rebellion" would be "triumphant" and that "no man active in suppressing it" would be trusted or honoured.<sup>1</sup>

The Act of March 23, 1867 required that a majority of all the registered voters must take part in the elections to make valid the call for a convention and to ratify a constitution when framed. While the abstentions were in no State able to frustrate the first step in Congressional reconstruction, an analysis of the vote made it plain that it was possible by this means to defeat some of the constitutions and it was evident that the real Southern people preferred military to negro rule. But Stevens and his majority in the house were fertile in expedients and, soon after the assembling of Congress in December, passed a bill [December 18, 1867] providing that a majority of votes actually cast should

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<sup>1</sup> Sherman Letters, p. 299.

determine future elections, but this for a while slept in the Senate.

Meanwhile affairs in Alabama were proceeding apace. The election for the vote on the Constitution had been fixed for February 4, 1868. The canvass was attended with much public excitement. A conservative conference recommended abstention. Encouraged by the Democratic victories at the North the Southerners thought, that if they could stave off negro rule for a while, further successes might relieve them forever of the threatened burden. And now this devout people proposed a day of fasting and prayer to beseech Almighty God to deliver them "from the horrors of negro domination." A petition was sent to the lower House of Congress in which this dignified appeal was made: "We are beset by secret oath-bound political societies [loyal leagues]; our character and conduct are systematically misrepresented to you and in the newspapers of the North; . . . industry and enterprise are paralyzed by the fears of the white men and the expectations of the black that Alabama will soon be delivered over to the rule of the latter. . . . Continue over us, if you will do so, your own rule by the sword. Send down among us honorable and upright men of your own people, . . . and no hand will be raised among us to resist by force their authority. But do not, we implore you, abdicate your rule over us by transferring us to the blighting, brutalizing and unnatural dominion of an alien and inferior race."<sup>1</sup> This was undoubtedly the feeling of the mass of the Southern people but the prevailing sentiment of Congress robbed the petition of all effect.

Although the friends of the Alabama constitution made an effort to bring out a large vote and General Meade [the successor of Pope] extended the time of voting to five days, it failed to be ratified. The vote

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<sup>1</sup> Appletons' Annual Cyclopædia, 1868, p. 16.



for it was 70,812, against it 1005, total 71,817, lacking for ratification 13,550.<sup>1</sup>

This result undoubtedly hastened the action of the Senate. They substituted [February 25, 1868] an amendatory reconstruction bill of their own for that of the House which next day was concurred in and on March 11 became a law. Besides providing that "a majority of the votes actually cast" should decide the ratification of the Constitution it permitted at the same time the election of representatives to Congress and of State officers.

Having put a quietus on the Southern policy of abstention Congress again turned their attention to the United States Supreme Court, a case having arisen which they dared not suffer to take its usual course. One of the rare violations of the freedom of the press had been committed by General Ord, who had arrested Colonel McCardle, a Vicksburg editor, for severe criticism of him and of the Congressional policy and confined him in a military prison [November 13, 1867]. Failing to get relief from the United States Circuit Court of Mississippi, McCardle appealed to the Supreme Court, which denied a motion to dismiss his appeal and heard the case argued. The constitutionality of the Reconstruction Acts was involved, and as five out of nine of the Supreme Court judges believed them unconstitutional (so an apparently well-founded report ran) the Republicans in Congress were much alarmed. The House passed a bill requiring two-thirds of the judges to concur before any law should be deemed invalid but this was never reported to the Senate from their Judiciary Committee. Later, however, the two Houses agreed on an act, passing the same over the

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<sup>1</sup> Meade to Grant, Report of Secretary of War, 1868, p. 97. The white vote for the constitution did not probably exceed 5000, Fleming, pp. 541, 546, note; for the convention it had been 18,553; see Dunning, p. 204; Appletons' Annual Cyclopædia, 1868, p. 16.

President's veto [March 27, 1868], which, though general in its terms, took away from the Supreme Court its jurisdiction in the McCardle case and the appeal was therefore dismissed.<sup>1</sup> This action, together with the two previous decisions and the threats which ever since December 1866, had been in the air, warrant the words of Benjamin R. Curtis used somewhat later, Congress "with the acquiescence of the country" "subdued the Supreme Court" as well as "conquered" the President.<sup>2</sup>

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<sup>1</sup> 7 Wall. 506; Garner, pp. 159, 168; Dunning, p. 137; *The Nation*, Jan. 16, 23, Feb. 13, 1868, pp. 44, 62, 121; *Globe*, Jan. 13, 1868, p. 478 *et seq.*, Jan. 28, p. 791.

<sup>2</sup> Memoir of B. R. Curtis, vol. i. p. 421.

## CHAPTER XXXIII

MEANWHILE Congress had begun its last grapple with Johnson. The House of Representatives impeached him "of high crimes and misdemeanors in office" [February 24, 1868]. For more than a year impeachment had been impending and the Radicals had long been prepared to resort to this extreme remedy. On January 7, 1867 the House adopted a resolution authorizing the Judiciary Committee to inquire into the official conduct of Andrew Johnson and report whether in their opinion he had been guilty of "other high crimes and misdemeanours," which, in addition to treason and bribery, were impeachable offences under the Constitution. Near the close of the session the majority of the committee reported that enough evidence had been found to warrant the continuance of the investigation which was accordingly entrusted to the Judiciary Committee of the new Congress [the Fortieth convening March 4, 1867]. Ashley, the mover of the original resolution, hoped to prove that Johnson was implicated in the assassination of Lincoln and a number of other members believed that the power of pardon had been improperly and even corruptly used. The first charge was found out to be absurd and the second too flimsy to build a prosecution on. The committee by five to four decided [June 1, 1867] that there was no ground for impeachment but finally yielding to the persistence of the minority they re-opened the case and the taking of testimony was continued. Upon the President's suspension of Stanton and removal of Sheridan, after Congress had adjourned in July,<sup>1</sup> impeachment rang

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<sup>1</sup> *Ante.*

anew in the public ear. This may have had some effect on one member of the Judiciary Committee, who between June and November changed his mind and with it the majority, which was now found to support the ardent recommendations of impeachment appearing in George S. Boutwell's report of November 25. James F. Wilson, the chairman, presented cogently the views of the minority, which consisted of one Republican besides himself and the two Democratic members. Their conclusion was approved by the House and on December 7 impeachment was voted down by 108 (67 Republicans, 41 Democrats) to 57, all Republicans.<sup>1</sup>

On December 12 the President sent to the Senate a message giving his reasons for the suspension of Stanton in August;<sup>2</sup> and Stanton wrote a formal reply addressed to the same body.<sup>3</sup> After duly considering the matter the senators by a vote of 35 : 6 decided [January 13, 1868] not to concur in his suspension from the office of Secretary of War. Official notice of this was sent to the President, to Stanton and to General Grant, who, it will be remembered, was acting as Secretary of War *ad interim*. Next day Grant left the War Office and Stanton took possession of it.

Thus far the President had acted with dignity, but

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<sup>1</sup> The Impeachment and Trial of A. Johnson, Dewitt. This will be referred to as Dewitt; Impeachment Investigation; *Congressional Globe*; McPherson; *The Nation*.

<sup>2</sup> Printed in the Trial of A. Johnson, vol. i. p. 148. This will be referred to as Trial. Thomas Ewing, who from time to time gave Johnson much good advice on a variety of subjects wrote to him Nov. 28, "I think it important that you report Stanton to the Senate." — Johnson Papers, MS.

<sup>3</sup> This is printed in Gorham's Stanton, vol. ii. p. 412, without date or explanation, but it seems never to have been sent to the Senate. A search has failed to find it in the Executive journal, in any public document or in the Impeachment proceedings. It is not referred to in the Executive journal or in Howard's report on the President's message. Nor does the *New York Tribune* mention it between Dec. 12, 1867 and Feb. 4, 1868. The *Tribune* says Dec. 16 that it was the intention of the Senate committee to furnish Stanton a copy of the message and allow him to answer the charges but Jan. 6, 1868 it states that Stanton declined to make a reply.



now cutting loose apparently from his wiser advisers, he proceeded to bungle in characteristic fashion. [First he fastened a quarrel upon General Grant who since the previous August had acted as a daysman, placing his country above any personal or party consideration. His support was a valuable asset on either side of the controversy and, with the exercise of a little tact, the President could easily have gained it for himself, since for some time there had been friction between the General and Stanton. Stanton did not like Grant's acceptance of the position of Secretary of War *ad interim*, and partly because of this feeling, he had been during the succeeding months in a state of nervous irritability.<sup>1</sup> When he regained possession of the War Office he sent to the General of the Army what the latter considered a peremptory request.<sup>2</sup> If Schofield's recollection be correct, Grant seriously considered the purpose of demanding Stanton's removal or the acceptance of his own resignation.<sup>3</sup> And now Johnson threw away this mighty support for the sake of coming out the better in a verbal controversy.<sup>4</sup>

Apparently the source of the misunderstanding was that Johnson believed he had Grant's promise, in case of the Senate's refusing concurrence in the suspension of Stanton, to hold on to his office and to force Stanton to have recourse to judicial proceedings in an attempt to obtain possession; or else to return the office to the President before the Senate acted so that he might appoint an-

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<sup>1</sup> Life of Stanton, Gorham, vol. ii. p. 410.

<sup>2</sup> Memoirs of General W. T. Sherman, vol. ii. p. 422, 2d ed.

<sup>3</sup> Forty-Six Years, p. 413.

<sup>4</sup> Johnson did not err from lack of accurate information. W. S. Hillyer, who had been on Grant's staff for a while during the war (see Grant's Personal Memoirs, vol. i. p. 255) and seems to have been a friend of both the President and the General, had conversations with Grant and Rawlins and wrote to Johnson Jan. 14: "I am now *fully satisfied that General Grant never had any conversation or collusion with Mr. Stanton in regard to his (Stanton's) restoration to the War Office.* That Grant never expected that Stanton would resume the duties of the War Office." — Johnson Papers, MS.

other Secretary *ad interim* who would carry out his wishes. Grant denied having made any such promise "either express or implied." But there was doubtless some other reason for the quarrel, otherwise it would have broken out on the day that Grant surrendered the office [January 14]. On that very day [Tuesday] the General at the request of the President attended the regular Cabinet meeting and although the conversation was earnest in regard to the transaction it "was respectful and courteous on both sides" and not the slightest thing was said to disturb their amicable relations. Next day in company with General Sherman he called at the White House and the two had a friendly conversation with the President. Two days previously, Sherman, at the particular request of Grant, had urged the nomination of Governor J. D. Cox as Secretary of War as a way out of the imbroglio and the two generals must have thought that they could secure his confirmation by the Senate. "I have assurances from a source which I deem reliable," wrote Thomas Ewing to the President Sunday January 12, "that if you will nominate Governor Cox of Ohio to the Senate to-morrow morning for Secretary of War he will be confirmed at once and no direct vote will be taken on Stanton—indirectly this will sanction his removal. Cox is a Republican openly opposed to negro suffrage. If he accept, his associations here will make him soon out-and-out conservative and he will be very useful in the coming political struggle—such is my opinion. . . . If he decline or if the Senate do not confirm him you will be *in statu quo*. It must be done to-morrow morning or the occasion will have gone by. I advise the measure; it will avoid unpleasant complications of which we have as many as the country can well endure." <sup>1</sup>

Cox was an excellent man and would have administered

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<sup>1</sup> Johnson Papers, MS.

the department to the satisfaction of both the President and Congress but his appointment under all the circumstances did not commend itself to Johnson. He dallied and let the Senate commit itself by its decisive and irrevocable vote of the Monday [January 13]. On the Wednesday [January 15] Grant told the President that he thought Stanton might be induced to resign and three days later he and Sherman agreed that the Secretary ought to give up the office. On Sunday [January 19] he called on the President whose talk was "pacific and compromising" and from the White House he went to see the Secretary of War. "I soon found," he wrote to Sherman, "that to recommend resignation to Mr. Stanton would have no effect unless it was to incur further his displeasure; and therefore did not directly suggest it to him. . . . I would advise that you say nothing to Mr. Stanton on the subject unless he asks your advice. It will do no good and may embarrass you."<sup>1</sup>

Nettled by statements in the press that he had broken faith with the President, Grant on January 28 wrote to him an open letter stating the facts according to his view. This elicited an adroit and persistent statement from Johnson [January 31] confirming the substantial correctness of the parent account in the *National Intelligencer* [January 15]: it was a tactless reply and its chief effect was to anger Grant. "I never saw him more troubled," wrote Sherman to the President, "than since he has been in Washington and been compelled to read himself a 'sneak and deceiver' based on reports of four of the Cabinet and apparently with your knowledge."<sup>2</sup> To Johnson's letter of January 31, Grant sent [Feb-

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<sup>1</sup> W. T. Sherman's Memoirs, vol. ii, p. 424. This letter must have been written Jan. 19, although the date given is Jan. 29. I have made up this account from the correspondence in Sherman's Memoirs and the Grant-Johnson correspondence printed in McPherson, p. 282 *et seq.*

<sup>2</sup> Jan. 31, Memoirs, vol. ii, p. 427.

ruary 3] a warm rejoinder, in which he told the President that he had accepted the office of Secretary of War *ad interim* in August 1867 not to assist him to get rid of Stanton but for fear that he might appoint some one else who would not enforce the Reconstruction Acts. One week later, Johnson wrote a powerful reply and sent therewith statements of five of his cabinet ministers, attesting his version of the rehearsal at the cabinet meeting of January 14 of Grant's promise to hold on to the War Department or give it up in sufficient time for his place to be filled; the cabinet ministers showed that they understood Grant to have admitted that he had made such a promise. Johnson was clever at disputation and, so far as this correspondence goes, had the better of the controversy. It was a dear victory nevertheless, for it drove Grant from his wisely patriotic position of moderator into the arms of the Republicans. Grant was absolutely sincere in his recollection and it was an honest misunderstanding, the ill effects of which might easily have been obviated had Johnson been minded to sacrifice his private taste for controversy to a practical need of the nation's.]

The President's dominating purpose was to get rid of Stanton. He endeavoured in vain to induce General Sherman to accept the position of Secretary of War; but Sherman did better than to accede to his wish. He enclosed to him instead a letter from his father-in-law Thomas Ewing (an able lawyer and statesman, a warm Union man and supporter of Lincoln at both elections), which showed a thorough understanding of the situation and pointed out plainly enough a winning course for Johnson to pursue. "I am quite clear," Ewing wrote on January 25, "in the opinion that it is not expedient for the President to take any action now in the case of Stanton. So far as he and his interests are concerned, things are in the best possible condition. Stanton is in the Department, *not* his secretary, but the secretary of



the Senate, who have taken upon themselves his sins, and who place him there under a large salary to annoy and obstruct the operations of the Executive. This the people well enough understand and he is a stench in the nostrils of their own party. . . . Now the dislodging of Stanton and filling the office even temporarily without the consent of the Senate would raise a question as to the legality of the President's acts, and he would belong to the attacked instead of the attacking party. If the war between Congress and the President is to go on, as I suppose it is, Stanton should be ignored by the President, left to perform his clerical duties which the law requires him to perform, and let the party bear the odium which is already upon them for placing him where he is." <sup>1</sup> On January 29, Ewing wrote directly to the President: "It will not do to adopt rash measures. The country cannot be redeemed or your administration sustained without the aid of the conservative Whigs. . . . It is better to let Stanton alone. . . . I cannot advise Sherman to take his place and he is not willing to do it. There is indeed no object to be gained by it. Reconstruction will dispose of itself in spite of the act of any person you may place in the Department and the sooner the better, for it can have but one result, and you may now avoid all responsibility for its mischiefs. You could not entirely, if you should seem to, control it but for a day. . . . They [the Radicals] are evidently preparing to resume impeachment but it must be on some new pretence and if they have any plausible pretence and carry it out it will have a bad effect on the country — on *you* and, what I should not much lament, on them. It is at present wise to bear and forbear. Some of the Democratic leaders whom I know are eloquent orators but most dangerous counsellors." <sup>2</sup>

Two days later Sherman enforced this good counsel

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<sup>1</sup> Sherman's Memoirs, 2d ed., vol. ii. p. 425.

<sup>2</sup> Johnson Papers, MS.

with words of his own. "You certainly can afford to await the result," he wrote. "The Executive power is not weakened, but rather strengthened. Surely he [Stanton] is not such an obstruction as would warrant violence, or even a show of force, which would produce the very reaction and clamor that he hopes for to save him from the absurdity of holding an empty office for the safety of the country."<sup>1</sup>

Surrounded by office-seeking sycophants and receiving in his daily mail letters from obscure and hungry beggars for place, full of flattery for his "statesmanlike acts,"<sup>2</sup> Johnson disregarded the good counsel of Ewing and Sherman and a warning he had received from Chase<sup>3</sup> and driven on by vindictive resentment, seemed to think that he could remove the executive officer, who stood for the Reconstruction policy of Congress and the people, without bringing a hornets' nest about his ears. On February 13 he said to Jerome B. Stillson, who was the Washington correspondent of the *New York World* and had gained the President's confidence:<sup>4</sup> I have the right to eject Stanton and I intend soon to get rid of him. If he refuses to vacate I shall ignore him and do business with the new appointee. If he positively refuses to budge it may be necessary to institute legal proceedings against him while, if he yields possession and the Senate refuses to concur in his removal, he will have recourse to the courts. In either case a judicial decision will be reached which is what I am after.

"Well," said Stillson, "so it seems that the removal isn't going to involve any serious trouble after all."

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<sup>1</sup> Sherman's *Memoirs*, vol. ii. p. 427, 2d ed.; the original is in the Johnson Papers, Library of Congress. See also John Sherman's opinion, *Sherman Letters*, p. 313.

<sup>2</sup> This statement is amply supported by Johnson's private correspondence, MS., Library of Congress.

<sup>3</sup> "I warned him of the danger of the avalanche." — Warden, p. 682.

<sup>4</sup> As to Stillson see *New York Herald*, Dec. 27, 1880.

Johnson smilingly replied: "What nonsense! it's very likely that *I* am anxious to start a revolution. No, I'll leave that responsibility with those who have already undertaken it. What I am anxious to do, as everybody ought to know, is to tranquillize this government. I propose to have my right to a harmonious cabinet tested by the laws and the sooner the better. This state of things ought not to have continued so long."<sup>1</sup>

On February 21, he summoned to the White House Lorenzo Thomas, the Adjutant-General, "a gentleman of the old school, convivial in his habits and somewhat garrulous in conversation,"<sup>2</sup> and handed to him two papers, one addressed to Stanton removing him from the office of Secretary of War and the other appointing Thomas Secretary *ad interim*. The President directed Thomas to deliver the former to Stanton. Thomas went to the War Office and handed it to Stanton who, after reading it asked, "Do you wish me to vacate the office at once, or will you give me time to remove my private property?" "Act your pleasure," was the reply. He then handed his own letter of authority to Stanton who asked for a copy and, in order to have one made, he went downstairs to his own room. Returning he handed it to Stanton who said, "I do not know whether I will obey your instructions or whether I will resist them." I shall issue orders as Secretary of War, said Thomas. You shall not, Stanton answered. I will countermand them, and, turning to two generals in the room, he commanded them to respect no orders coming from Thomas as Secretary of War. He then dictated and signed this order: "Sir: I am informed that you presume to issue orders as Secretary of War, *ad interim*. Such conduct and orders are illegal and

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<sup>1</sup> Letter of Stillson to Curtis, Johnson Papers, MS. In the first part of the conversation I have changed the third person to the first. The reply of Johnson to Stillson is said to be, "in substance."

<sup>2</sup> Dewitt, p. 343.

you are hereby commanded to abstain from issuing any orders other than in your capacity as Adjutant-General of the army." Thomas then went to the President and reported the conversation but did not show him Stanton's order. Johnson said, "Very well; go and take charge of the office and perform the duties."

The President notified the Senate of his action as did also Stanton. The Senate went into an Executive session lasting seven hours and by a vote of 28:6 adopted a resolution, "That under the Constitution and laws the President has no power to remove the Secretary of War and to designate any other officer to perform the duties of that office *ad interim*." The House received the news from Stanton and arranged for the consideration of the serious business on the morrow. Covode offered a resolution "that Andrew Johnson be impeached of high crimes and misdemeanors." This was referred to the Committee on Reconstruction, which during this session had taken charge of the impeachment question and had eight days earlier [February 13] by a vote of six to three laid on the table a resolution to impeach. The Senate sent a copy of its resolution to the President, to Stanton and to Thomas. Thomas was found about eleven o'clock at a masquerade ball at Marini's whither he had taken his daughter and another young lady. The messenger knew him by his major general's uniform, asked him to unmask and delivered the paper into his hands.

Before going to the masquerade Thomas had talked foolishly. In the evening at Willard's Hotel he told a journalist that he "should the next day demand possession of the War Department and that if the demand was refused or resisted he should apply to General Grant for force to enable him to take possession." Later at his own house he said to the delegate from Dakota Territory that he should occupy the War Office at ten o'clock on the morrow. "Suppose Stanton objects to it — resists,"



was asked. "Well, I expect to meet force by force," was the reply. "Suppose he bars the doors?" "I will break them down." When Stanton heard of these threats he swore out a complaint against Thomas and a warrant was issued for his arrest.<sup>1</sup>

On Washington's birthday events were early afoot. At eight o'clock, before Thomas had breakfasted, the marshal appeared at his house with the warrant. Thomas consented to go with him forthwith, but said that he must first see the President. The two went together to the White House. "Very well," said Johnson, when told of Thomas's arrest, "that is the place I want it in — the courts." Thomas, after consulting with the Attorney-General, went with the marshal to the Justice, who had issued the warrant and who now released him on bail. He notified the President of these proceedings and then went to the War Department.<sup>2</sup>

We have seen that Congress had on the day before shown a steadfast determination to stand by its War Minister. Upon its adjournment many members hastened to the Department to assure him of their physical support. Now Stanton well knew that "possession is eleven points of the law" and he would not leave his office. His meals were brought to him and there he passed the night with a number of friends who kept vigil. In the morning the night watchers were relieved by six members of the House and two other gentlemen, who, hearing of Thomas's threat to take possession of the War Office had come hither to render aid and bear witness. Three of the members made memoranda of what occurred and the fullest, that of Thomas W. Ferry, of Michigan, written immediately afterwards while in the War Department, is undoubtedly an accurate account. "In the presence of Secretary Stanton," he wrote,

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<sup>1</sup> Trial, vol. i. pp. 156, 159, 210, 221, 418, 426, 437, 441, 515; Dewitt; McPherson; *Globe*.

<sup>2</sup> Trial, vol. i. p. 427.

“Judge Kelley, Moorhead, Dodge, Van Wyck, Van Horn, Delano, and Freeman Clarke, at twenty-five minutes past twelve m., General Thomas, Adjutant-General, came into this Secretary of War office, saying, ‘Good morning,’ the Secretary replying, ‘Good morning sir.’ Thomas looked around and said, ‘I do not wish to disturb these gentlemen, and will wait.’ Stanton said, ‘Nothing private here; what do you want, sir?’

“Thomas demanded of Secretary Stanton the surrender of the Secretary of War’s office, Stanton denied it to him, and ordered him back to his own office as Adjutant General. Thomas refused to go. ‘I claim the office of Secretary of War, and demand it by order of the President.’ The following colloquy ensued :

*Stanton.* I deny your authority to act and order you back to your own office.

*Thomas.* I will stand here, I want no unpleasantness in the presence of these gentlemen.

*Stanton.* You can stand there if you please, but you cannot act as Secretary of War. I am Secretary of War. I order you out of this office and to your own.

*Thomas.* I refuse to go, and will stand here.

*Stanton.* How are you to get possession; do you mean to use force?

*Thomas.* I do not care to use force but my mind is made up as to what I shall do. I want no unpleasantness though. I shall stay here and act as Secretary of War.

*Stanton.* You shall not and I order you as your superior back to your own office.

*Thomas.* I will not obey you, but will stand here and remain here.

*Stanton.* You can stand there, as you please. I order you out of this office to your own. I am Secretary of War and your superior.

“Thomas then went into opposite room across hall (General Schriver’s) and commenced ordering General

Schrivver and General E. D. Townsend. Stanton entered followed by Moorhead and Ferry, and ordered those generals not to obey or pay attention to General Thomas's orders; that he denied his assumed authority as Secretary of War, *ad interim*, and forbade their obedience of his directions. 'I am Secretary of War, and, I now order you, General Thomas, out of this office to your own quarters.' This conversation followed:

*Thomas.* I will not go. I shall discharge the functions of Secretary of War.

*Stanton.* You will not.

*Thomas.* I shall require the mails of the War Department to be delivered to me, and shall transact the business of the office.

*Stanton.* You shall not have them and I order you to your office."<sup>1</sup>

The business of the House required the attention of the members of Congress and they left the War Department. The story is continued well by Thomas: "I said, 'The next time you have me arrested, please do not do it before I get something to eat.' I said I had had nothing to eat or drink that day. He put his hand around my neck as he sometimes does, and run his hand through my hair, and turned to General Schriver and said, 'Schriver, you have got a bottle here bring it out.' Schriver unlocked his case and brought out a small vial containing I suppose about a spoonful of whiskey, and stated at the same time that he occasionally took a little for dyspepsia. Mr. Stanton took that and poured it into a tumbler and divided it equally and we drank it together. A fair division because he held up the glasses to the light and saw that they each had about the same, and we each drank. Presently a messenger came in with a bottle of whiskey, a full bottle; the cork was drawn, and he and I took a drink together. 'Now,' said he, 'this at least is neutral ground.'"<sup>2</sup>

<sup>1</sup> Trial, vol. i. pp. 232, 233; see also Dewitt.

<sup>2</sup> Ibid., vol. i. p. 429.

On this day the President sent to the Senate the nomination of Thomas Ewing of Ohio, an unexceptionable man, as Secretary of War; but the nomination was not received as on account of the holiday [February 22] the Senate had adjourned. It was submitted to the Senate on the following Monday [February 24] but never acted on.<sup>1</sup>

On February 22 the House met at noon. At twenty minutes after two the Committee on Reconstruction came in with Stevens at their head and he presented their report signed by all the Republican members of the committee, which recommended the adoption of the resolution, "That Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors in office." Debate went on during that day and the following Monday when at five o'clock impeachment was determined by 126 : 47. Every Republican present voted aye, every Democrat no; the sixteen Republicans "not voting" were unavoidably absent.<sup>2</sup> A committee of two was appointed to communicate the action of the House to the Senate and one of seven to declare "Articles of Impeachment." Next day [February 25] Thaddeus Stevens and Bingham appeared at the bar of the Senate. Stevens, "looking the ideal Roman, with singular impressiveness, as if he were discharging a sad duty"<sup>3</sup> though in truth his heart must have been full of joy that what he had so long striven for was an accomplished fact, said "In the name of the House of Representatives and of all the people of the United States we do impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office; and we further inform the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same." The President *pro tempore* replied, "The Senate will take order in the premises."

<sup>1</sup> Ibid., pp. 537, 555.

<sup>2</sup> *Globe*; Dewitt; McPherson.

<sup>3</sup> Storey's Sumner, p. 347.

Storey was present in the Senate.



The arrest of Thomas had been made on the charge of a violation of the Tenure-of-Office Act which the President believed to be unconstitutional; and he and the Attorney-General endeavored to have made out of the arrest a case which should bring the matter before the United States Supreme Court, feeling confident that the Court would declare the law null and void. Such a decision would take away the ground for impeachment. Stanton and the Congressional party felt that the Supreme Court was against them and, in the bout of legal fencing that ensued, they circumvented the President by a line of procedure which precluded the case of *Stanton vs. Thomas* from coming before the Court.<sup>1</sup>

Thomas performed none of the duties of the Secretary of War except to attend the Cabinet meetings. Since his reoccupancy of the office Stanton had not been to the White House nor had any verbal or written communication with the President. The mail of the Department went to him, as did also the communications of the heads of bureaus, and, so far as the routine work went, he remained Secretary of War.<sup>2</sup> On the evening of the day that impeachment was voted Thomas made another threat. Karsner, a citizen of Delaware, Thomas's native State, approached him at the President's levee and after making himself known said, "General, the eyes of Delaware are on you. Stand firm." Thomas "said he would; he was standing firm and he would not disappoint his friends and in two days, or two or three days, or a short time, he would kick that fellow out."<sup>3</sup> Stanton was barricaded in his office and remained there day and night for a number of weeks. For a while it was feared that the President, who was not suspended from his office during the Impeachment trial, would order Thomas to take forcible possession. At one time when the rumours were more startling or men were more credu-

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<sup>1</sup> Trial, vol. i. p. 607.

<sup>2</sup> Ibid., vol. i. p. 445.

<sup>3</sup> Ibid., p. 223.

lous than usual Senator Chandler and Representative Logan, who were determined men and good fighters, mustered a trusty company of a hundred who occupied the basement of the War Department and kept guard until Chandler and Logan deemed the danger past. Grant detailed a guard for the building and empowered the general in command to call for any troops in Washington.<sup>1</sup> Not since the assassination of Lincoln had Washington been in such a state of excitement and each new move added fuel to the flame. That Johnson's native stubbornness, which would lead him to the verge of a *coup d'état*, was checkmated by a feeble will, which forever held him back from executing it, was a fact imperfectly comprehended. The threats of Thomas were taken more or less seriously and many men believed that the country was on the eve of another civil war which would begin by bloodshed in the War Office. The muttering of the South against the Reconstruction Acts was deemed the presage of an uprising, if Northern support could be had; the action of the President and the Democratic strength shown at the autumn elections of 1867 pointed out a rallying ground from which the work of Congress might be overthrown. That the South had been subdued and was really submissive was not understood. That the Northern Democrats had openly sneered at Johnson, that the South no longer relied on him for help was forgotten. Only a few knew that the Democrats were not at all displeased at the impeachment of the President, looking upon it as certain in any event to redound to their benefit and injure the Republican party in the approaching presidential contest. Even when known, this satisfaction of the Democrats might be construed as the delight of the unpatriotic in a tumult that might conceivably lead to revolution. It was difficult to persuade men who had gone through the alarms

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<sup>1</sup> Gorham's Stanton, vol. ii. pp. 442, 444 ; Life of Chandler, p. 296.

of the winter of 1860-1861, the prelude to a long civil war, that the fear of a recrudescence of strife was absurd. And if Johnson and Thomas had been bolder men, the farce of the War Office on Washington's birthday might well have turned into a tragedy. The danger of the situation is as plainly seen in the anxious words of the cool and optimistic John Sherman as it is in the violent declamation in the House and the alarmist and sensational writing in the press. "By Johnson's infernal folly" he wrote to his brother, "we are drifting into turbulent waters. The only way is to keep cool and act conscientiously. . . . I do not anticipate civil war for our proceeding is unquestionably lawful."<sup>1</sup> As we see it now, William M. Evarts stated the case exactly but only a man of an exceptionally equal mind could speak with the voice of posterity while capital and country were seething with excitement. He was one of the counsel for the President and had worked all Sunday on the answer to the articles of impeachment and, at a dinner at Sumner's, proffered this excuse for his labour on the hallowed day, "Is it not written that if thine ass fall-eth into a pit it is lawful to pull him out on the Sabbath day?"<sup>2</sup>

The action of the House was precipitate and turned out to have been ill-judged, but it was an entirely natural proceeding. The remarkable change of sentiment among the Republicans is significant enough of the folly of Johnson's action. On December 7, 1867 sixty-seven Republicans, among them some of the very best men in the House, voted against impeachment; on February 24, 1868 not one of them. On February 13 four Republicans of the Committee on Reconstruction gave their voices against impeachment; nine days later they agreed with their three radical colleagues. These sixty-seven moderate Republicans, practically half the Republican

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<sup>1</sup> March 1, Sherman Letters, p. 314.

<sup>2</sup> Storey's Sumner, p. 345.

strength in the House, felt that the attack on their War minister was the culmination of two years of resistance to their Reconstruction measures. Looking upon the President as the "Incubus" they had let the conditions of the game be tacitly understood. They virtually said to him: You hamper us in our policy, you increase our work, you keep us in a constant state of uncertainty, watchfulness and alarm, but for all that we would not impeach you. But if you violate a law, no matter how technical may be the offence, we shall get rid of you by impeachment. "Look to it well!—Lose not a trick." Now, by the attempted removal of Stanton and the appointment of Thomas, you have broken the Tenure-of-Office Act, one object of which was the protection of our War minister.

In truth, the House thought the violation of the law so palpable that defence would be difficult and the trial brief. A doubt as to conviction hardly entered their minds and, had the actual law been what they intended it to be, the result would undoubtedly have justified their expectation. The sentiment of the Republicans of the country sustained the House with practical unanimity. Indeed, if their representatives had not been quick to act, the country, understanding as did the House that the Tenure-of-Office Act protected Stanton, would have demanded impeachment.<sup>1</sup>

The House selected seven managers to conduct the impeachment, John A. Bingham, George S. Boutwell, James F. Wilson, Benjamin F. Butler, Thomas Williams, Thaddeus Stevens, and John A. Logan. On March 4 they appeared at the bar of the Senate and presented eleven articles of impeachment, only five of which need concern us.

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<sup>1</sup> My authorities are the various books on the subject, *passim*. I have also consulted the *New York Tribune*, *New York World*, *The Nation*, the *Boston Advertiser*, and the *Chicago Tribune*, from February 21 to March 5.



Article I made in substance the charge that the order for the removal of Stanton was, and was intended to be, a violation of the Tenure-of-Office Act, and that, as the Senate was in session it also violated with intent the Constitution of the United States. It formed "the foundation of the first eight articles" and entered "materially into two of the remaining three."<sup>1</sup> As a matter of fact, this was the sole ground for impeachment. For observe: in the view of the House "up to twelve o'clock on February 21, 1868, the President was innocent and unimpeachable and at one o'clock on the same day he was guilty and impeachable."<sup>2</sup> The country and posterity would have understood the trial better had the prosecutors confined themselves to this one charge but we shall soon see why they dared not rely upon it alone.

Article II "charges that the President issued letter of authority to Lorenzo Thomas to act as Secretary of War *ad interim*, the Senate being in session, in violation of the Tenure-of-Office Act, and with intent to violate it and the Constitution, there being no vacancy in the office of Secretary of War."

Article III "alleges the same act as done without authority of law and alleges an attempt to violate the Constitution."<sup>3</sup>

Article X, which Butler induced the House to add to the articles originally reported by the committee of seven, charged that Johnson's speeches in 1866<sup>4</sup> constituted "a high misdemeanor in office."

Article XI, fathered by Stevens, was a trick to catch wavering senators: its true value was appreciated by Senator Buckalew. Said he: "it is nondescript and a curiosity in pleading. As an article on which to convict its strength consists in its weakness—in the obscurity

<sup>1</sup> Curtis, Trial, vol. i. p. 377.

<sup>2</sup> Evarts, Trial, vol. ii. p. 291.

<sup>3</sup> Butler, Trial, vol. i. p. 95.

<sup>4</sup> Extracts are given in the Specifications; see also my vol. v. p. 618.

of its charges and the intricacy of its form. It was an afterthought of the House of Representatives or rather a reluctant concession by the House to the pertinacity of its author. . . . Considered in parts it is nothing — the propositions into which it is divisible cannot stand separately as charges of criminal conduct or intention; and considered as a whole it eludes the understanding and baffles conjecture. . . . The matter of this article, so far as substance can be detected in it, is drawn mostly from the other articles; but that matter is arranged, manipulated, and combined together in a manner to vex the student and confound the judge; and the new particulars of charge or aggravation (whichever they may be) contained in the article are hinted at rather than expressed, and we vainly explore the context to discover distinctly their antecedents or the conclusions to which they lead.”<sup>1</sup> Fitly was it termed the Omnibus article.

On March 4 the President *pro tempore* of the Senate presided; before the session ended it was ordered that the Chief Justice be requested to be present on the morrow as presiding officer. Next day Chief Justice Chase took the chair and said, “Senators, I attend the Senate in obedience to your notice, for the purpose of joining with you in forming a court of impeachment for the trial of the President of the United States.” Justice Nelson, the senior Associate Justice, administered the oath to Chase, who in turn swore each of the Senators present to “do impartial justice according to the Constitution and the laws.” Next day the Senate adopted rules for the trial and adjourned to March 13. On that day the Chief Justice administered the oath to a number of senators who had not been previously sworn. The managers on the part of the House of Representatives appeared and were conducted to the places assigned to

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<sup>1</sup> Trial, vol. iii. p. 228; see also Dewitt, p. 388.

them. Obedient to the order of the Chief Justice the Sergeant-at-Arms cried, "Andrew Johnson, President of the United States; Andrew Johnson, President of the United States: appear and answer the articles of impeachment exhibited against you by the House of Representatives." The President appeared by his counsel, Henry Stanbery, who had resigned the office of Attorney-General for this purpose, Benjamin R. Curtis of Massachusetts and Thomas A. R. Nelson of Tennessee; they asked an allowance of forty days for the preparation of their answer. The Senate gave them ten. At the session of March 23, two more counsel appeared for the President, William M. Evarts of New York and William S. Groesbeck of Ohio. The answer was read and next day the replication of the House of Representatives was presented. The attorneys for the President desired thirty days to prepare for trial; they were given six.

On Monday March 30 the trial proper commenced. Chase, distinguished in appearance, of great natural dignity, easily conscious of the awe and veneration inspired by the Chief Justice of the Supreme Court, made an imposing presiding officer over what he constantly called, "the Senate sitting as a court of impeachment." The Senate committee on Rules had employed the title, "the Senate when sitting as a High Court of Impeachment" but after some discussion this was altered to "the Senate when sitting on the trial of impeachment." Beneath the question of the name lay a serious difference of opinion, cropping out from time to time, as to whether the trial body was indeed the Senate or a Court. Butler who opened the case for the prosecution maintained that the Tribunal had none of the common attributes of a judicial court; and that it was therefore the right of senators and their duty to their States and constituents to determine as to the guilt of Andrew Johnson as they would in any matter

of legislation which came before their body.<sup>1</sup> The managers from the House nearly always addressed the Chair as Mr. President, the counsel for the defence, as Mr. Chief Justice. Indeed the verdict might depend upon whether the Senators regarded the trial as a judicial process or as "a purely political proceeding" as Stevens argued.<sup>2</sup> Grimes spoke of the Senate as a court and in a private letter stated his belief of the general attitude of its fifty-four members. "About a dozen men," he wrote, "are determined to convict, about the same number are determined to acquit and the balance intend to hear the evidence and weigh the law before they pronounce judgment."<sup>3</sup> There were twelve Democrats in the Senate, all of whom, it was assumed from the first, would vote for acquittal. It required two-thirds or thirty-six to convict; seven Republicans voting with the Democrats would prevent the impeachment from being sustained.

The Chief Justice ordered the Sergeant-at-Arms to open the court by proclamation [March 30]. The Sergeant proclaimed that the Senate was sitting for the trial of the articles of impeachment. The President's counsel Stanbery, Curtis, Evarts, Nelson, and Groesbeck took their seats. The managers of the impeachment were announced. Following them, came the members of the House of Representatives with E. B. Washburne, chairman of the Committee of the Whole, at their head, accompanied by the Speaker and the clerk; to all these seats had been assigned. The remaining space on the floor was filled with privileged persons. Admission to the galleries was by ticket and they were full. Butler opened the case for the prosecution and read from printed slips for three hours. Most of his argument was an adroit legal plea on the articles which recited

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<sup>1</sup> Trial, vol. i. pp. 90, 94.

<sup>2</sup> *Globe*, Feb. 24, p. 1399.

<sup>3</sup> March 6, Life by Salter, p. 336.



the real offence<sup>1</sup> but about half an hour was devoted to a stump speech, in which he dilated upon his own article, the Tenth, told with delight the story of Johnson's "Swinging around the Circle"<sup>2</sup> and quoted from his speeches in the effort to influence the senators by reminding them of their exasperation at the conduct of the President in the autumn of 1866. As Evarts said of Butler's performance, "The air was filled with epithets, the dome shook with invective."<sup>3</sup> But this part of his plea was singularly futile. Had a vote been taken on the Tenth article at the end of the Trial (which was not done) there would have been at least twenty-four voices against conviction.<sup>4</sup>

The rest of this week was consumed in the testimony for the prosecution. The evidence consisted for the most part of simply putting before the senators in legal form facts which they already knew; it added nothing to the strength of the impeacher's case. It was apparent that the verdict depended upon the arguments of counsel and upon the reasonings of senators among themselves. An adjournment was had from Saturday until the following Thursday to give the counsel for the President "three working days" for preparation.

On April 9, Benjamin R. Curtis opened the defence of the President. Born in the same year as Lincoln, Darwin, Tennyson and Gladstone [1809] he came from the same State as Butler; but in appearance, manner and character he was his very opposite. A man of scrupulous honour, he loved his profession for its conservatism and moral power; he had no use for its tricks. He was one of the greatest of Massachusetts lawyers and a powerful advocate. He had been a judge of the school

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<sup>1</sup> He supported it by a "brief of the authorities [English as well as American] upon the law of impeachable crimes and misdemeanors prepared by William Lawrence, M.C., of Ohio."

<sup>2</sup> See vol. v. p. 617.

<sup>3</sup> Trial, vol. ii. p. 285.

<sup>4</sup> Dewitt, p. 580; E. G. Ross, *The Johnson Impeachment*, p. 132.

of Marshall and Story, and it was a loss to the country, when he resigned the position of justice of the United States Supreme Court.<sup>1</sup> But in these two days as advocate he rendered his country as noteworthy a service as in 1857 when he dissented from Taney in the Dred Scott case. A fortnight before he made his argument he wrote to George Ticknor: "There is not a decent pretence that the President has committed an impeachable offence. 'The *party*' are in a condition to demand his removal from power and do demand it."<sup>2</sup>

Curtis began: "Mr. Chief Justice, I am here to speak to the Senate sitting in its judicial capacity as a court of impeachment, presided over by the Chief Justice for the trial of the President of the United States. This statement sufficiently characterizes what I have to say. Here party spirit, political schemes, foregone conclusions, outrageous biases can have no fit operation." The question "which enters deeply into the first eight articles is whether Mr. Stanton's case comes under the Tenure-of-Office Act." He then read the section which might be held to apply to it, the first: "That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified except as herein otherwise provided. *Provided*, that the Secretaries of State, of the Treasury, of War, of the Navy and of the Interior, the Postmaster-General and the Attorney-General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate." He argued,

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<sup>1</sup> In 1857.

<sup>2</sup> Memoir, vol. i. p. 416.

“Mr. Stanton was appointed in January, 1862, during the first term of President Lincoln. Are these words ‘during the term of the President’ applicable to Mr. Stanton’s case? That depends upon whether an expounder of this law judicially, who finds set down in it as a part of the descriptive words ‘during the term of the President’ has any right to add ‘and any other term for which he may afterward be elected.’ By what authority short of legislative power can those words be put into the statute?”<sup>1</sup>

After relating the history of the act Curtis asked the Senate, “Looking at the language of the law, its purpose, the circumstances under which it was passed, the meaning thus attached to it by each of the bodies<sup>2</sup> which consented to it, whether it is possible to hold that Mr. Stanton’s case is within the scope of that Tenure-of-Office Act? I submit it is not possible.” The President “came to the conclusion that the case of Mr. Stanton was not within this law. . . . How is it possible for this body to convict him of a high misdemeanor for construing a law as those who made it construed it at the time it was made?”<sup>3</sup>

Curtis met effectually the charge that the President violated the Constitution because the order of removal of Stanton was made during the session of the Senate.<sup>4</sup> Continuing, he laid down a principle of the utmost value speaking with the gravity and measure of a judge.

In his message to the Senate of December 12, 1867, Johnson stated that when the Tenure-of-Office Act was sent to him for approval he asked the advice of the Cabinet. “Every member of it advised me that the

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<sup>1</sup> Trial, vol. i. pp. 377–379.

<sup>2</sup> Curtis’s argument is clever, and undoubtedly candid, but it is not entirely correct historically. The House took a different view of the Act from the Senate’s — a matter which I shall later consider — but Curtis’s main contention that Stanton’s case was not within the Act is sound beyond question.

<sup>3</sup> Trial, vol. i. pp. 382, 384.

<sup>4</sup> Ibid., p. 384.

proposed law was unconstitutional. All spoke without doubt or reservation but Mr. Stanton's condemnation of the law was the most elaborate and emphatic," and he advised the President to veto the bill.<sup>1</sup> Johnson was eager to have the constitutionality of this act passed on by the Supreme Court and in the removal of Stanton he had that purpose in view. To this point in the case Curtis addressed himself: "It may be," he said, "and has been a high and patriotic duty of a citizen to raise a question whether a law is within the Constitution of the country. Will any man question the patriotism or the propriety of John Hampden's act when he brought the question whether 'ship money' was within the Constitution of England before the courts of England?" But it is true that the President stands in a different position from that of the private citizen. "He is to take care that the laws are faithfully executed. When a law has been passed through the forms of legislation, either with his assent or without his assent, it is his duty to see that that law is faithfully executed so long as nothing is required of him but ministerial action. He is not to erect himself into a judicial court and decide that the law is unconstitutional, and that therefore he will not execute it; for if that were done, manifestly there never could be a judicial decision. He would not only veto a law, but he would refuse all action under the law after it had been passed, and thus prevent any judicial decision from being made. He asserts no such power. He has no such idea of his duty. His idea of his duty is, that if a law is passed over his veto, which he believes to be unconstitutional, and that law affects the interests of third persons, those whose interests are affected must take care of them, vindicate them, raise questions concerning them, if they should be so advised.

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<sup>1</sup> Trial, vol. i. p. 151. Johnson vetoed the bill and it was passed over his veto, March 2, 1867.



If such a law affects the general and public interests of the people, the people must take care at the polls that it is remedied in a constitutional way. But when, senators, a question arises whether a particular law has cut off a power confided to him by the people through the Constitution, and he alone can raise that question, and he alone can cause a judicial decision to come between the two branches of the government to say which of them is right, and after due deliberation, with the advice of those who are his proper advisers, he settles down firmly upon the opinion that such is the character of the law, it remains to be decided by you whether there is any violation of his duty when he takes the needful steps to raise that question and have it peacefully decided.”<sup>1</sup>

Curtis spoke a part of two days, somewhat over five hours in all; he did not read his plea but from time to time referred to his copious notes and books of authority. His argument pretty nearly demolished the legal case against the President but he did not feel sure that he had won a verdict. “There are from twenty-two to twenty-five senators,” he wrote to Ticknor on the day that he concluded his plea, “who began the trial with a fixed determination to convict. I have no reason to suppose any one of them is shaken, or will be. About twelve to fifteen of the dominant party had not abandoned all sense of right and given themselves over to party at any cost. What will become of them I know not, but the *result* is with them.”<sup>2</sup>

The submission of testimony for the defence followed. It was clearly shown that at no time and in no event had the President had any idea of recourse to force or violence; that Thomas’s vapourings had no warrant from any fixed purpose or idle threat of Johnson. While Secretary Welles was under examination, Evarts

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<sup>1</sup> Trial, vol. i. p. 387; see Burgess, p. 182.

<sup>2</sup> Memoir, vol. i. p. 416.

offered to prove by him that those who were present at the Cabinet meeting, when the Tenure-of-Office bill was considered, advised the President that it was unconstitutional and that "the duty of preparing a message setting forth the objections to the constitutionality of the bill was devolved on Mr. Seward and Mr. Stanton."<sup>1</sup> Butler objected to such testimony and the question was argued by counsel. The Chief Justice decided that the evidence was admissible for the purpose of showing the intent of the President; but, as his decisions had been overruled a number of times, he submitted the question to the Senate which decided against admitting the testimony by 29:20. Evarts then offered to prove that the question was asked the Cabinet, when the Secretary of War was present, whether Stanton and the other secretaries who had been appointed by Lincoln "were within the restrictions upon the President's power of removal from office created" by the Tenure-of-Office bill and the opinion was expressed that they were not within such restrictions. The Chief Justice thought the testimony proper but submitted the matter at once to the Senate which refused to admit it by 26:22.<sup>2</sup> Seward, McCulloch, Browning [Interior] and Randall [Postmaster-General] were in attendance ready to corroborate the testimony of Welles and it was whispered that Stanton might be forced to take the stand.<sup>3</sup> The action of the Senate in shutting out this testimony contributed to the failure of the impeachment cause, exerting an influence on at least two Republican senators who voted for acquittal.<sup>4</sup>

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<sup>1</sup> Stanton wrote, "When the bill was before Congress, I advised against its passage . . . after the bill passed I hoped it would be reconsidered and fail after veto and would cheerfully have stated my objections in the form of a veto had time and health permitted." — Gorham, vol. ii. p. 416.

<sup>2</sup> Trial, vol. i. pp. 676, 693, 694, 697.

<sup>3</sup> Dewitt, pp. 445, 446.

<sup>4</sup> Henderson, Trial, vol. iii. p. 304; Dewitt, p. 447. Grimes, Trial, vol. iii. p. 336; probably Ross also, *The Johnson Impeachment*, p. 163.

This evidence was barred out on April 17 and 18. The final arguments began on April 22. "*Before that time,*" Curtis wrote, "the case will be effectively and actually settled."<sup>1</sup> On the afternoon of April 21 Evarts sent word to General Schofield that he would like to see him and within an hour the general was closeted with the attorney in his room at Willard's hotel. Evarts asked Schofield to consent that his nomination as Secretary of War in place of Stanton should be sent to the Senate before the close of the Impeachment trial. He was giving the reasons for this request when the interview was cut short by Grant's calling for Schofield, but at eight o'clock in the evening the conference was resumed. I am fully satisfied, Evarts said, that the President cannot be convicted upon the evidence; if he is removed—and in this a considerable number of the ablest lawyers and statesmen among the Republican senators agree with me<sup>2</sup>—it will be done wholly from supposed party necessity and not really for anything he has done but for fear of what he may do. I do not believe the President can be convicted in any event but certain Republican senators are at a loss to know how they can satisfy their party unless the War Department is placed in a satisfactory condition in advance. "A majority of Republicans in both houses of Congress and throughout the country<sup>3</sup> now regret the commencement of the Impeachment proceeding, since they find how slight is the evidence of guilty intent. But now the serious question is, how to get out of the scrape? A judgment of guilty and removal of the President would be ruinous to the party and cause the political death of

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<sup>1</sup> April 10, Memoir, vol. i. p. 416.

<sup>2</sup> Evarts was the only one of the President's counsel who was a Republican.

<sup>3</sup> The contemporary evidence does not I think confirm this statement of Evarts. A number of Republicans should be substituted for "a majority." Evarts's confidence and optimism led him to overrate the popular strength of his side.

every senator who voted for it as soon as the country has time to reflect upon the facts and appreciate the frivolous character of the charges upon which the removal must be based. The precedent of the impeachment and removal of the President for political reasons would be exceedingly dangerous to the government and the Constitution; in short the emergency is one of great national peril.”<sup>1</sup> This too is the view of a number of prominent Republican senators (although I am not at liberty to mention any names) and from them comes the suggestion that your name be sent to the Senate in order that senators may vote upon the President’s case in the light of that nomination. Your appointment will be satisfactory to General Grant and will give the Republican party a sense of security with regard to their policy of reconstruction. There is no question of friendship or hostility towards the President personally for in truth he has no friends. The Democrats will of course vote for acquittal but would rejoice at his conviction, feeling confident that this would cause the defeat of the Republican party at the presidential election in the autumn.

Schofield said that he must consult Grant and at eleven o’clock that night called at his house and opened up the subject, which he had broached to him during the afternoon. Grant replied: Under all the circumstances I do not see how you can decline the nomination. But I myself do not believe in any compromise of the impeachment question. The President ought to be convicted or acquitted fairly and squarely on the facts proved. If he is acquitted, as soon as Congress adjourns, he will trample the laws under foot and do whatever he pleases. Congress will have to remain in session all summer to protect the country from the lawless acts of the President; the only limit to his violation of law has

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<sup>1</sup> Schofield’s *Forty-six Years*, p. 415.



been and will be his courage which has been very slight but will be vastly increased by his escape from punishment. I will not believe any pledge or promise Johnson may make in regard to his future conduct. The only safe course and the most popular one will be to remove the President. I can understand the grounds of apprehension in the minds of some leading Republicans but I do not agree with them. The safest and wisest course is the bold and direct one.

Next morning [April 22] Schofield called upon Evarts and talked with the utmost frankness. I have always been treated kindly by the President, he said, and I feel kindly towards him. I advised him to avoid all causes of irritation with Congress and try to act in harmony with it. I regard the removal of Stanton in the way it was done as wrong and unwise. But this proposition to make me Secretary of War, as I understand it, comes from the Republican side of the Senate and is accepted by the President in the interest of peace and for the purpose of securing harmony between the legislative and executive departments of the government and a just and faithful administration of the laws including the Reconstruction Acts. While of course I cannot exact any pledge from the President I desire that he should understand my position and if after my views "have been fully stated to him he sends my name to the Senate I will deem it my duty to say nothing on the subject of accepting or declining the appointment until the Senate has acted upon it."<sup>1</sup> Evarts intimated that this was satisfactory. On April 23 the President sent the nomination of Schofield as Secretary of War to the Senate, and it was at once seen that Johnson's defenders had scored a point. Pressure was now undoubtedly brought to bear upon Grant, who was certain to receive the Republican

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<sup>1</sup> Schofield's *Forty-six Years*, p. 413 *et seq.* I have abridged and paraphrased the conversations and changed the person from third to first. I have preserved the quotation marks in Schofield's account.

presidential nomination in May, to use his influence to overturn the arrangement. On April 25 he wrote to Schofield, who was at Richmond, a confidential letter advising him to decline the secretaryship; but Schofield replied that the advice came too late; he was under promise to await the action of the Senate. For the present the Senate did not act on the nomination.<sup>1</sup>

Before considering the final arguments, some explanation in regard to the standing of the impeachment case may serve to clear up certain obscurities in the situation. On the day on which the House impeached the President [February 24] it would have been difficult to find a Republican member who did not believe that the allegations would be sustained. The Republicans of the country almost unanimously thought that Johnson was guilty and would be legally removed. But now after two months that confidence was shaken. All the excitement subsided as the country watched the progress of the trial under due form of law. Stanton was safe in the office of the War Department and went home to sleep at night. Seeing things no longer through an emotional medium, the House and the country were able to appreciate the sledge-hammer blows given to their case by the defence, which showed them plainly enough how they had misconceived the Tenure-of-Office Act.

In December 1866, both the House and the Senate began the consideration of bills "to regulate the tenure of offices," but the bill of the Senate became the ground-plan of the Act and it expressly excepted the members of the Cabinet from its operation. Edmunds explained why this had been done: Congress ought not to force an unacceptable "confidential adviser" upon the President. Howe moved to strike out the exception but his motion was negatived without a division. On February 1, 1867 the House took up the Senate bill. The

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<sup>1</sup> Schofield's *Forty-six Years*, p. 418.

Reconstruction bill was then pending and it was deemed certain that military rule would be imposed on the South. It was of the utmost importance that the war portfolio should be held in sympathetic hands. Therefore, with the express and avowed purpose of protecting Stanton, the exception of cabinet officers was struck out. The Senate refused by a vote of 28 : 17 to concur in the amendment. A committee of conference was ordered, Schenck, Williams [Pennsylvania] and Wilson representing the House, Williams [Oregon], Sherman and Buckalew the Senate. In this committee a compromise was made which was expressed in the proviso already quoted.<sup>1</sup> Williams [Pennsylvania] one of the Impeachment managers drew it and averred in his argument in the Impeachment trial that it was not meant to exclude Stanton entirely from the operation of the Act.<sup>2</sup> When the report of the committee was read to the House, Schenck explained the proviso as "an acceptance by the Senate of the position taken by the House";<sup>3</sup> and members generally understood that they had protected Stanton from suspension or removal. Otherwise, indeed, there was no point to the proviso. The House did not in the least care to safeguard Browning, Stanbery, and Randall, men appointed by Johnson and thoroughly in sympathy with him, and yet, by the language of the proviso, this is exactly what they had done whilst they had failed to include Stanton, who held under a commission signed by Lincoln.

The Republican senators on the Conference committee understood that in the juggle of words they had practically gained the point of their contention. Doolittle said

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<sup>1</sup> *Ante.*

<sup>2</sup> *Globe Supplement*, p. 326.

<sup>3</sup> Feb. 19, 1867, *Globe*, p. 1340. Schenck's full statement is ambiguous. From what he said preceding the words cited, the inference might be drawn that Stanton was not included in the Act. Such a construction was placed upon Schenck's explanation by Curtis in his argument, *Trial*, vol. i. p. 381; *ante.*

that "this most marvellous production" did not secure the very thing aimed at; it did not prevent the President from removing the Secretary of War. Sherman denied that there had been any such purpose. Doolittle retorted that in the debate on the original bill it had been "openly stated that it was not to be tolerated that the present Chief Magistrate should have the power to remove the Secretary of War by name," to which Sherman replied: "Some senator may have had that purpose. That the Senate had no such purpose is shown by its vote twice to make this exception. That this provision does not apply to the present case is shown by the fact that its language is so framed as not to apply to the present President. The senator argues truly that it would not prevent the present President from removing the Secretary of War, the Secretary of the Navy and the Secretary of State. And if I supposed that either of these gentlemen was so wanting in manhood, in honor, as to hold his place after the politest intimation by the President of the United States that his services were no longer needed, I certainly, as a senator, would consent to his removal at any time, and so would we all."<sup>1</sup>

This proviso then had one meaning in the House, another in the Senate. It was one of the compromises not infrequently made in Conference committees when ambiguity is designedly employed in order to secure the passage of an act. Nor is it surprising that in the turmoil at the end of this busy session there should have been a misunderstanding. In practically two months this act, and the first Reconstruction Act and a rider to the Army appropriation bill, limiting the President's command of the army,<sup>2</sup> were matured and passed: the first two were fraught with immense consequences. The country and General Grant understood the act as

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<sup>1</sup> Feb. 18, 1867, *Globe*, p. 1516.

<sup>2</sup> All three of these were enacted March 2, 1867.



did the House. "It was intended," Grant wrote, "to protect the Secretary of War, whom the country felt great confidence in. The meaning of the law may be explained away by an astute lawyer but common sense and the views of the loyal people will give to it the effect intended by its framers."<sup>1</sup> Scarcely a doubt of conviction existed at first and, had the Tenure-of-Office Act been what the House and the country supposed it to be, Johnson would have been removed from office. But now the case had a very different look: three, six, or ten Republican senators, it was rumoured, proposed to vote to "acquit the criminal."<sup>2</sup>

Thus stood affairs when the final arguments were begun [April 22]. Four spoke on each side. Boutwell, Stevens, Williams, and Bingham for the prosecution, Nelson, Groesbeck, Evarts and Stanbery for the defence. It was an extraordinary game. The managers for the prosecution exhausted every argument, every trick of pleading. Language was twisted to any shape desired; now a popular construction was insisted on, now a technical. Any and every dodge was tried to show that Stanton was in the purview of the Tenure-of-Office Act. Boutwell and Bingham contended that the Secretary of War was serving out Lincoln's term and he was therefore entitled to hold his office until March 4, 1869 unless removed therefrom "by and with the advice and consent of the Senate."<sup>3</sup> "Stanton," declared Stevens, "was appointed Secretary of War by Lincoln in 1862 and continued to hold under Johnson which by all usage is considered a reappointment." The word "appointed" said Williams has a technical and a popular meaning. In the technical meaning "there was no appointment certainly by Johnson." In the popular, the meaning which the people take, "there unquestionably was."<sup>4</sup> These

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<sup>1</sup> Aug. 1, 1867, *ante*.

<sup>2</sup> *Chicago Tribune*, April 15.

<sup>3</sup> Trial, vol. ii. pp. 93, 452.

<sup>4</sup> *Globe Supplement*, pp. 324, 326.

flimsy claims were brushed aside by Groesbeck, who was a lawyer down to his finger-tips, as well as a studious, cultivated man. "Stanton's commission is dated January 15, 1862," he said.<sup>1</sup> "It is a commission given to him by President Lincoln, by which he was to hold the office of Secretary for the Department of War 'during the pleasure of the President of the United States for the time being.' Mr. Johnson became President on the 15th of April, 1865. He has not in any manner commissioned Mr. Stanton. Upon these facts, senators, I claim it is clear that Mr. Stanton is not protected by this bill. Let us inquire. The law proposed to grant to the cabinet officers, as they are called, a term that shall last during the term of the President by whom they were appointed, and one month thereafter. Mr. Johnson has not appointed Mr. Stanton. He was appointed during the first term of Mr. Lincoln. He was not appointed at all during the current presidential term. . . . The gentleman has said this is Mr. Lincoln's term. The dead have no ownership in office or estate of any kind. Mr. Johnson is the President of the United States with a term, and this is his term. But it would make no difference if Mr. Lincoln were living to-day; if Mr. Lincoln were the President to-day he could remove Mr. Stanton. Mr. Lincoln would not have appointed him during this term. It was during the last term that Mr. Stanton received his appointment, and not this; and an appointment by a President during one term, by the operation of this law will not extend the appointee through another term because that same party may happen to be re-elected to the Presidency. Stanton, therefore, holds under his commission, and not under the law."<sup>2</sup>

A growing consciousness of the legal weakness of their

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<sup>1</sup> Groesbeck spoke after Boutwell and before the three other managers.

<sup>2</sup> Trial, vol. ii. p. 194.

case now suggested to the managers of impeachment the plan of trying to arouse the indignation of the Republican senators over Johnson's recreancy to the party, his efforts to thwart their reconstruction policy and his reluctant and cavilling administration of their laws. They talked to the gallery and to the country at large in the hope of bringing to bear upon the wavering senators the reflex action of public sentiment. Boutwell's plea would doubtless have seemed persuasive enough to the partisan, if intelligent gatherings in Faneuil Hall, but it was lost upon the able lawyers of the Senate, who must have regarded him as a mere novice in their profession.<sup>1</sup>

Groesbeck made the most eloquent speech of all.<sup>2</sup> "No one who heard it," writes Moorfield Storey, "can forget the wonderful impression which the brief argument of Mr. Groesbeck made upon the Senate and the audience. Beginning at noon, his voice an hour later had become so husky as to be almost inaudible."<sup>3</sup> An earlier recess was taken on that account, and when he began again his voice gradually cleared, until during the last hour he addressed a crowded but absolutely still chamber. No senator wrote on his desk, no page was summoned, no conversation could be heard in gallery or cloak room, and a silence prevailed almost unknown in the Senate while every one listened with rapt attention to each word that the speaker uttered. It was an oratorical feat which had no parallel at that trial, and few in the experience of the Senate."<sup>4</sup>

Stevens followed Groesbeck and (in my opinion) made the ablest argument for the prosecution. He discussed only one article, the eleventh, "the one that was finally

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<sup>1</sup> Boutwell's plea is apparently best remembered by "the hole in the sky" illustration, *Trial*, vol. ii. p. 116. For Evarts's witty reply, see p. 297.

<sup>2</sup> The order was, Boutwell, Nelson, Groesbeck, Stevens, Williams, Evarts, Stanbery, Bingham.

<sup>3</sup> Groesbeck was ill.

<sup>4</sup> Storey's *Sumner*, p. 349; see also *The Nation*, April 30, 1868, p. 314; Dewitt, p. 480.

adopted " at his "earnest solicitation " and he never lost sight of his dear single purpose : to secure those doubtful senators. The result showed his adroitness as a lawyer for his article turned out to be the strongest of the eleven. " If there be shrewd lawyers," he had said, " as I know there will be and cavilling judges, and, without this article they do not acquit Johnson, they are greener than I was in any case I ever undertook before the court of quarter sessions." <sup>1</sup> His argument had been carefully written out and he began to read it standing at the Secretary's desk but, after proceeding for a few minutes, he found himself too feeble to stand and obtained permission to go on seated ; he continued for almost half an hour, when his voice became too weak for utterance and he handed the manuscript to Butler who read it to the end. One may wonder whether if Stevens had possessed his physical strength of two years previous the result would have been different. Certainly the trial would have been conducted otherwise. He would have been chairman of the managers and dictated the line of procedure ; but on account of his infirm health the management of the trial fell to Butler, next to him the most adroit of the prosecutors. Butler not infrequently lapsed into the " Old Bailey style " seeming to forget that the jurors were the senators of the United States, a circumstance that Stevens would have constantly borne in mind.

William M. Evarts had been heralded to Washington as one of the ablest lawyers of New York City. Only fifty years old, of iron health, he had an enormous capacity for work which he used in the most effective way. Owing to Stanbery's illness a large part of the conduct of the defence fell to him and the contrast between the effect of his presence and that of Butler's is a striking illustration of the importance of character when a great case is tried at the bar. Of course he made an able

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<sup>1</sup> Dewitt, pp. 382, 387 ; Trial, vol. ii. p. 326.



argument; being Evarts he could not have done otherwise. He demolished the second and third articles relating to the *ad interim* appointment of Thomas;<sup>1</sup> and in general it may be said that, if anything was left of the impeachers' case after Curtis and Groesbeck, nothing apparently remained when Evarts sat down. When he brought "the people of the United States" into court he uttered words of historic and philosophic value. Not that his statement of popular sentiment was accurate, for the Republicans of the country believed that Johnson's offences were grave enough for his removal and the Democrats did not care about the result. But let one consider Evarts's "people" idealized, having the judicial sense of posterity, and one will appreciate the permanent value of his contribution to the law of impeachment as it should be under our Constitution. The people, he said, "understand that treason and bribery are great offences, and that a ruler guilty of them should be brought into question and deposed. They are ready to believe that following the law of that enumeration, there may be other great crimes and misdemeanors touching the conduct of government and the welfare of the state that may equally fall within the jurisdiction and the duty. But they wish to know what the crimes are. They wish to know whether the President has betrayed our liberties or our possessions to a foreign state. They wish to know whether he has delivered up a fortress or surrendered a fleet. They wish to know whether he has made merchandise of the public trust and turned authority to private gain. And when informed that none of these things are charged, imputed or even declaimed about they yet seek further information and are told that he has removed a member of his cabinet. The people of this country are familiar with the removal of members of cabinets and all

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<sup>1</sup> Trial, vol. ii. p. 333.

persons in authority. That on its mere statement does not strike them as a grave offence needing the interposition of this special jurisdiction. Removal from office is not with the people of this country, especially those engaged in politics, a terror or a disagreeable subject; indeed it may be said that it maintains a great part of the political forces of this country; that removal from office is a thing in the Constitution, in the habit of its administration. I remember to have heard it said that an old lady once summed up an earnest defence of a stern dogma of Calvinism, that if you took away her 'total depravity' you took away her religion, and there are a great many people in this country [who believe] that if you take away removal from office you take away all their politics. So that, on that mere statement it does not strike them as either an unprecedented occurrence or as one involving any great danger to the State.

"Well, but how comes it to be a crime?' they inquire. Why, Congress passed a law for the first time in the history of the government undertaking to control by law this matter of removal from office; and they provided that if the President should violate it, it should be a misdemeanor and a high misdemeanor; and now he has removed or undertaken to remove a member of his cabinet and he is to be removed himself for that cause. He undertook to make an *ad interim* Secretary of War, and you are to have made for you an *ad interim* President in consequence. That is the situation. Was the Secretary of War removed? they inquire. No; he was not removed, he is still Secretary, still in possession of the Department. Was force used? Was violence meditated, prepared, attempted, applied? No; it was all on paper, and all went no further than making the official attitude out of which a judgment of the Supreme Court could be got." <sup>1</sup>

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<sup>1</sup> Trial, vol. ii. pp. 273, 274.

Evarts's argument was learned and acute; it was redundant, but was enlivened by pleasant wit as well as sharp satire at the expense of Boutwell, Stevens, Butler and Bingham. He spoke parts of four days;<sup>1</sup> fourteen hours in all, and according to *The Nation* came "very near tiring the Senate out."<sup>2</sup> He had an inkling of this himself and, when he rose on the fourth day said, "Mr. Chief Justice and Senators, I cannot but feel that you had at the adjournment yesterday reached somewhat of the condition of feeling of a very celebrated judge, Lord Ellenborough, who, when a very celebrated lawyer, Mr. Fearne, had conducted an argument upon the interesting subject of contingent remainders to the ordinary hour of adjournment, and suggested that he would proceed whenever it should be his lordship's pleasure to hear him; responded, 'The court will hear you, sir, to-morrow; but as to pleasure that has been long out of the question.'"<sup>3</sup> All through his speech ran a note of confidence that the verdict would be in favour of his client.

Bingham closed the case for the prosecution. He spoke for three days<sup>4</sup> but he could not cope with the lawyers on the other side. He surmounted pretty well the difficulty of not having been one of the original impeachers like his associates who had spoken, and he made a speech, which delighted his Ohio constituents and electrified the listening crowd in the galleries, who on his conclusion greeted him with applause and cheers. As the manifestations continued after a warning had been given, the Senate directed the Chief Justice to order the galleries cleared and this was done. Perhaps it is not entirely fair to judge Bingham's argument by these noisy manifestations nor on the other hand by the printed report. His plea certainly revived the hopes

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<sup>1</sup> April 28-30, May 1.

<sup>2</sup> May 7, p. 361.

<sup>3</sup> Trial, vol. ii. p. 336.

<sup>4</sup> May 4-6.

of the impeachers. "Bingham is making a splendid speech," telegraphed E. B. Washburne to the New Hampshire Republican convention. "All looks well. The Constitution will be vindicated and the recreant put out of the White House before the end of the week." And Butler sent this word: "The removal of the great obstruction is certain. Wade and prosperity are sure to come with the apple-blossoms."<sup>1</sup>

The trial on the whole was conducted with becoming stateliness. It was marred only by some sharp practice of Butler's and an altercation between him and Nelson.<sup>2</sup> The Chief Justice presided with dignity and impartiality. "If a man whom Republicans would gladly see condemned," he wrote in a private letter, "has rights, and I must judge, the rights shall be respected. And so of the Democrats. I expect to please neither at all times."<sup>3</sup> April 19 he gave to Gerrit Smith his opinion of one phase of the case. "To me therefore," he wrote, "it seems perfectly clear that the President had a perfect right, and indeed was under the highest obligation to remove Mr. Stanton, if he made the removal not in wanton disregard of a constitutional law, but with a sincere belief that the tenure-of-office act was unconstitutional, and for the purpose of bringing the question before the Supreme Court. Plainly it was the proper and peaceful if not the only proper and peaceful mode of protecting and defending the Constitution. I was greatly disappointed and pained, therefore, when the Senate yesterday excluded the evidence of members of the Cabinet as to their consultations and decisions (in one of which Mr. Stanton took a concurring part) and the advice given to the President in pursuance thereof. I could conceive of no evidence more proper to be received

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<sup>1</sup> Dewitt, p. 515. Wade as President *pro tempore* of the Senate would be the successor of Johnson.

<sup>2</sup> See the discussion of the *Alta Vela* matter, Trial, vol. ii.

<sup>3</sup> Warden, p. 682.



or more appropriate to enlighten a court as to the intent with which the act was done; and accordingly ruled that it was admissible.”<sup>1</sup> On that same day, two days before Evarts expressed to Schofield his confidence of acquittal, Chase wrote privately to another correspondent, “I hazard no conjecture as to the result; but I think it safe to say that if the vote were deferred for six weeks, until after the Chicago nomination [by the Republican convention which chose Grant] conviction would be impossible.”<sup>2</sup> The Radicals thought that the Chief Justice leaned to Johnson and withdrew from him their admiration and support; until this trial he had been their favourite candidate for the presidency not excepting Grant.

The impeachment managers were overtopped in ability by the President’s counsel. It was perhaps a consciousness of this which found vent in Boutwell’s sneer at men whose intellects had been “sharpened but not enlarged by the practice of law”; but as Evarts turned this cleverly upon him he must have wished that he had left it unsaid.<sup>3</sup> The senators with legal minds must have been amused at this reproach of Boutwell’s directed at men with the breadth of view of Curtis and Evarts.

Monday, May 11, was the day fixed by the Senate for deliberation. It sat with closed doors and there is no record of the speeches. But a rule had been adopted allowing senators to file their written opinions within two days after the vote should be taken; and from these the statements and arguments of six of the doubtful senators may be derived.<sup>4</sup> Sherman said: “As Stanton is

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<sup>1</sup> Warden, p. 685.      <sup>2</sup> Ibid., p. 687.      <sup>3</sup> Trial, vol. ii. pp. 77, 285, 297.

<sup>4</sup> Fessenden’s opinion was undoubtedly prepared May 11 as it was printed in the *New York Times* of May 15. Salter says Grimes’s opinion as printed was delivered May 11, p. 237. Trumbull’s was filed May 16 and printed in the *New York Times*, May 18. Ross intimates that all the opinions were declared at the session of May 11. The Johnson Impeachment, p. 130. I do not think

not protected by the Tenure-of-Office Act, his removal rests upon the act of 1789, and he, according to the terms of that act and of the commission held by him, and in compliance with the numerous precedents cited in this cause was lawfully removed by the President" and I cannot therefore vote for his conviction under the first article. . . . But I "conclude that the appointment of Thomas was a wilful violation of the law in derogation of the rights of the Senate and that the charges contained in the second and third articles [and others] are true." I shall also vote "guilty" on the eleventh article.<sup>1</sup> Howe came to the same conclusion.<sup>2</sup> Sherman and Howe were honest men and lawyers and perhaps a layman ought not to suggest the saying of Molière, "There are adjustments with one's conscience" to account for the curious reasoning which could see guilt in the second and third articles and not in the first; but they had committed themselves to this view of the removal of cabinet officers when the Tenure-of-Office bill was pending. Desirous of finding Johnson guilty they sought their excuse in the other charge.<sup>3</sup> But had he been convicted on this, it would have gone down into history that the President was removed from office for an *ad interim* appointment of a day which the Senate possessed the power to terminate at once by the confirmation of Ewing, an unexceptionable man.

Fessenden said, "As Stanton was appointed to hold 'during the pleasure of the President for the time being' and his tenure was not affected by the Tenure-of-Office Act the President had a right to remove him from office on the 21st of February, 1868 and consequently cannot be

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Fowler's and Van Winkle's could have been. Eight of the doubtful senators filed opinions, Sherman, Fessenden, Van Winkle, Fowler, Henderson, Howe, Trumbull and Grimes.

<sup>1</sup> Trial, vol. iii. pp. 12, 15, 16.

<sup>2</sup> Ibid., pp. 69, 81.

<sup>3</sup> See Sherman's Recollections, vol. i. p. 427; Andrew D. White's Autobiography, vol. ii. p. 133.

held guilty under the first article.”<sup>1</sup> From the “legal right to remove Stanton” it follows that the President “had a right to issue the letter of authority to General Thomas to discharge the duties of the Department of War under and by virtue of the act of 1795.” He thus disposed of the second and third articles and he showed clearly why he could not vote “guilty” on the eleventh.<sup>2</sup>

“In my opinion,” said Grimes, “the President has not been guilty of an impeachable offence by reason of anything alleged in any of the articles preferred against him.”<sup>3</sup> “In my view of the law,” said Henderson, “the first and only really important question to be settled is this: could the President lawfully remove Stanton as Secretary of War on the 21st day of February last? . . . If he could legally remove Stanton a vacancy was created

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<sup>1</sup> Fessenden touched on another point in the case which I have not referred to. “It has been argued,” he said, “that Johnson has recognized Stanton as coming within the first section of the Tenure-of-Office Act by suspending him under the provisions of the second section. . . . A sufficient answer to the argument is that, whether Stanton comes within the first section of the statute or not, the President had a clear right to suspend him under the second section.” Trial, vol. iii. p. 21.

<sup>2</sup> Ibid., pp. 22, 25, 28.

<sup>3</sup> Ibid., p. 340. Grimes summed up in a clear and convincing way the reasons for thinking the Tenure-of-Office Act unconstitutional: “When it is remembered that according to Chief Justice Marshall, the Act of 1789 creating the Department of War was intentionally framed ‘so as to clearly imply the power of removal to be solely in the President,’ and that, ‘as the bill passed into a law, it has ever been considered as a full expression of the sense of the legislature on this important part of the American Constitution;’ when it is remembered that this construction has been acquiesced in and acted on by every President from Washington to Johnson, by the Supreme Court, by every Congress of the United States from the first that ever assembled under the Constitution down to the Thirty-ninth; and when it is remembered that all of the President’s cabinet and the most eminent counsellors within his reach advised him that the preceding Congresses, the past Presidents and statesmen, and Story and Kent and Thompson and Marshall were right in their construction of the Constitution and the Thirty-ninth Congress wrong, is it strange that he [Johnson] should doubt or dispute the constitutionality of the Tenure-of-Office Act?” Trial, vol. iii. pp. 336, 337.

which under the laws as they existed on that day, could be filled by this *ad interim* appointment." The senator came to the conclusion that "for the removal of Stanton and the appointment of Thomas he had undoubted authority under the laws of Congress."<sup>1</sup>

"Johnson's speeches and the general course of his administration have been as distasteful to me as to any one," declared Trumbull. "If the question was, Is Andrew Johnson a fit person for President? I should answer *no*; but it is not a party question that I am to decide. Painful as it is to disagree with so many political associates and friends whose conscientious convictions have led them to a different result I must nevertheless, in the discharge of the high responsibility under which I act, be governed by what my reason and judgment tell me is the truth and the justice and the law of this case. Johnson has violated no law; it has not been shown that he violated the Constitution. I cannot vote to convict and depose the Chief Magistrate of a great nation when his guilt was not made palpable by the record. . . . Once set the example of impeaching a President for what, when the excitement of the hour shall have subsided, will be regarded as insufficient causes, and no future President will be safe who happens to differ with a majority of the House and two-thirds of the Senate on any measure deemed by them important, particularly if of a political character. Blinded by partisan zeal, with such an example before them, they will not scruple to remove out of the way any obstacle to the accomplishment of their purposes, and what then becomes of the checks and balances of the Constitution, so carefully devised and so vital to its perpetuity? They are all gone. In view of the consequences likely to flow from this day's proceedings, should they result in conviction on what my judgment tells me are insufficient

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<sup>1</sup> Trial, vol. iii. pp. 295, 296, 303.



charges and proofs, I tremble for the future of my country. I cannot be an instrument to produce such a result; and at the hazard of the ties even of friendship and affection till calmer times shall do justice to my motives, no alternative is left me but the inflexible discharge of duty.”<sup>1</sup>

The session of deliberation lasted until eleven o'clock at night.<sup>2</sup> Next day, Tuesday, May 12, was fixed upon for the vote on the articles of impeachment. When the Senate came together, they learned that Howard had been taken suddenly ill, had been delirious all of the previous day and that his physicians had declared that going to the Capitol would imperil his life. The Senate therefore adjourned until the following Saturday.

Much of Monday's proceedings leaked out, and everywhere it was felt to be extremely doubtful if conviction would indeed be the result. Public sentiment in every form was invoked to make sure of the doubting and reclaim the recusants. To all parts of the country came urgent suggestions from Washington that pressure be exerted at all points. Resolutions of public meetings, demands of Republican clubs and committees, emphatic newspaper articles and individual telegrams were brought to work directly and indirectly upon senators to get them to vote for conviction. The General Conference of the Methodist Episcopal Church sitting in Chicago appointed an hour for prayer that senators might be saved from error and “error” meant voting not guilty. “Think of legislatures, political conventions, even religious bodies,” wrote Chase [May 13], “undertaking to instruct Senators how to vote, guilty or not guilty! . . . All the appliances to force a measure through Congress are in use here to force a conviction through the Court of Impeachment.”<sup>3</sup> Not a doubt can exist that the Republican party of the North was almost a unit in the wish for

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<sup>1</sup> Trial, vol. iii. p. 328.

<sup>2</sup> Dewitt, p. 519.

<sup>3</sup> Warden, p. 694.

Johnson's removal. The unthinking said, "Convict him anyway and try him afterwards."<sup>1</sup> Boutwell, in his argument, had allowed one real reason for a change in the executive to appear plainly enough. "At the present time," he said, "there are 41,000 officers, whose aggregate emoluments exceed \$21,000,000 per annum."<sup>2</sup> The corollary was plain. If Wade should become President there would be many changes. The "faithful" would be rewarded and many of the faithful were now in Washington, vociferating that the peace of the country required that the impeachment be sustained. It was reported that the new cabinet had been selected. Butler was to be Secretary of State and E. B. Ward, a shrewd but erratic business man of Detroit, was to have the Treasury portfolio. Wade was a representative of the Radicals; and his friends, perhaps without his assent, were parcelling out the important offices. For them the removal of Johnson was vital and indeed it meant much for the political life of Wade. He had lost the senatorship of Ohio, and was now a candidate for Vice-President before the approaching Republican convention; he would almost certainly receive the nomination if he had the prestige and patronage of the White House at his back.

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<sup>1</sup> Ross, *The Johnson Impeachment*, p. 163.

<sup>2</sup> Trial, vol. ii. p. 80. Although after the passage of the Reconstruction and Tenure-of-Office Acts Johnson had no influence on legislation he still had power over appointments in certain contingencies as two letters in the Johnson Papers MS. will show. April 8, 1867, Stevens wrote to Seward: "Would it be any degradation for you to suggest to the Pres<sup>t</sup> (early) to settle an ugly trouble in my Dist. by appointing [two men are named] collector and assessor? It would quiet great irritation. No more satisfactory one to adm<sup>t</sup> is likely to be accepted. This is a bold request for a private individual." April 23, 1867, John Sherman wrote to the President from Cork, Ireland asking the appointment of J. A. Kasson as special Agent for the Post Office Department in Europe and added, "Though I was not in a position to ask it and therefore did not mention it to you I was much gratified at the appointment" of my brother as Judge of the Northern District of Ohio.

The pressure in Washington on five of the senators was tremendous. Fessenden, Trumbull and Grimes were let alone: after their positive statements in the Senate further argument was of course useless.<sup>1</sup> Henderson would undoubtedly have been in the category of these three had he not shown some hesitancy on one point. His first impression was that one charge in the eleventh article had been established by the President's own admission. Efforts were accordingly made [May 12] by the Republican members of Congress from his State, Missouri, to induce him to vote for that article or else to withhold his vote on any article upon which he could not vote "guilty." His perplexity was so great that he even thought of resigning his seat. On May 13 he received this telegram from St. Louis: "There is intense excitement here. Meeting called for to-morrow night. Can your friends hope that you will vote for the eleventh article? If so, all will be well." To this he replied, "Say to my friends that I am sworn to do impartial justice according to law and evidence and I will try to do it like an honest man." After this manly answer the Radicals ceased to ply him with their entreaties and threats.<sup>2</sup>

All kinds of influence (except of course the offer of money which was made in no case) were brought to bear upon Fowler [Tennessee] but neither argument nor badgering would induce him to commit himself. He expressed no opinion on any article until the Chief Justice asked for his decision.<sup>3</sup>

Up to May 11 Van Winkle and Willey [West Virginia] were in doubt; if on that day they came to a decision, after the exposition of the eleventh article by

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<sup>1</sup> As to Trumbull, Dewitt, p. 529; *Globe*, p. 2529.

<sup>2</sup> *Globe*, pp. 2549, 4463; Trial, vol. iii. p. 308; Report of Butler on "Raising of money to be used in Impeachment," p. 14; Dewitt, p. 522 *et seq.*

<sup>3</sup> Dewitt, p. 534; *Globe*, p. 4510.

the Chief Justice they kept it to themselves: they were claimed by both sides.<sup>1</sup>

But the pressure upon those four was small compared with that exerted upon Ross. The root-and-branch men could not conceive that a senator from Kansas should vote against a settled purpose of the Republican party; and when it was ascertained that he was prey to an honest vacillation they laboured with him with all their powers of persuasion. Entreaty was followed by menace. Ross said he was told that if he voted "not guilty" the charge that he had been bribed would be proclaimed to the world; moreover he was threatened with assassination. Pomeroy his colleague badgered him without ceasing. On Thursday, May 14, Ross told Pomeroy that he should probably vote for conviction on the first article but that he was undecided as to the second, third and eleventh. On the same day this telegram signed by D. R. Anthony and one thousand others was received by him, "Kansas has heard the evidence and demands the conviction of the President." On the morning of the day of voting he sent this reply, "I do not recognize your right to demand that I shall vote either for or against conviction. I have taken an oath to do impartial justice . . . and I trust I shall have the courage and honesty to vote according to the dictates of my judgment and for the highest good of my country."<sup>2</sup>

Twelve o'clock of Saturday, May 16, the day and hour fixed for the voting had come. The Chief Justice took the chair. The House managers and four of the President's counsel were present in the Senate chamber as likewise the House of Representatives which

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<sup>1</sup> Dewitt, p. 533. Ross's statement, *Globe*, p. 2599. Both Fowler and Van Winkle filed opinions but from the contemporary evidence it is almost positive that they did not state them on the day of deliberation, May 11.

<sup>2</sup> *Ibid.*, p. 537; *Globe*, pp. 2599, 4516; Ross's book, *The Johnson Impeachment*, chaps. x. xi.; Butler Report, p. 30. The *New York Times* of May 17 gives the date of Ross's reply May 15.



had resolved itself into the Committee of the Whole. The Senate by 34:19 decided to take the question first on Stevens's enigmatic article, the eleventh, a farrago of the others. Grimes was not present. Two days after delivering his opinion he had yielded to the nervous strain under which he had laboured. He was struck with paralysis in the Senate chamber.<sup>1</sup> Fessenden now asked a half hour's delay but at that moment Grimes entered the Senate chamber. The Chief Justice directed the reading of the eleventh article.<sup>2</sup>

On May 7 a rule had been adopted to take the first vote on article numbered one and so on successively but on the day of deliberation it was known that Sherman and Howe would not vote for conviction on the first article. Ross, on the other hand, was surer on that article than on any of the others; but confronted with the choice between two certain negatives and a doubtful affirmative, the Senate decided to dodge the main charge, the only one that had even a semblance of absolute value. Pomeroy pestered Ross to the last. Meeting him at the lobby door of the chamber he earnestly urged his colleague to vote for conviction. A vote for acquittal, he said, will be your political death. Moreover votes that way will be investigated on account of the suspicion of bribery.<sup>3</sup>

The verdict was in doubt. Chase thought that it

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<sup>1</sup> Life of Grimes, Salter, p. 357.

<sup>2</sup> On May 11, Chase had thus expounded this article: "The gravamen of the article seems to be that the President attempted to defeat the execution of the tenure-of-office act; and that he did this in pursuance of a declaration which was intended to deny the constitutional competency of Congress to enact laws or propose constitutional amendments, and by contriving means to prevent Mr. Stanton from resuming his office of Secretary, and also to prevent the execution of the appropriation act and the rebel States government acts. The single substantive matter charged is the attempt to prevent the execution of the tenure-of-office act; and the other facts are alleged either as introductory and exhibiting this general purpose, or as showing the means contrived in furtherance of that attempt." Trial, vol. ii. p. 480.

<sup>3</sup> *Globe*, p. 4516.

would be guilty. There were fifty-four senators; thirty-six were needed for conviction, nineteen for acquittal. The Radicals thought that they were sure of thirty-six; the sanguine on the other side believed that the negative vote would be at least twenty.

After the reading of the eleventh article, the Chief Justice told the clerk to "call the roll." The name of Mr. Anthony was called; he rose in his place. The Chief Justice demanded: "Mr. Senator Anthony, how say you? Is the respondent Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor as charged in this article?" "Guilty," said Anthony. The roll was called alphabetically, the question was put, and each senator rose and answered, the Republicans saying "Guilty," the Democrats, "Not Guilty," until Fessenden was reached and with him the first negative from Republican ranks.<sup>1</sup> Anxiety to hear each pronouncement had produced in the crowded chamber and galleries a stillness in which extreme tension of mind was the sole palpable fact; now every breath was held, for the turn of one of the doubtful judges had come. "Mr. Senator Fowler, how say you?" His answer was almost inaudible. Julian and others thought he had said "Guilty." The members of the House on the floor and the spectators in the galleries, representing the great popular majority at the North that were ardent for conviction, had a momentary thrill of joy as they

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<sup>1</sup> In his opinion Fessenden said: "To the suggestion that popular opinion demands the conviction of the President on these charges, I reply that he is not now on trial before the people, but before the Senate. In the words of Lord Eldon, upon the trial of the Queen, 'I take no notice of what is passing out of doors, because I am supposed constitutionally not to be acquainted with it.' And again, 'It is the duty of those on whom a judicial task is imposed to meet reproach and not court popularity.' The people have not heard the evidence as we have heard it. The responsibility is not on them but upon us. They have not taken an oath 'to do impartial justice according to the constitution and the laws.' I have taken that oath." Trial, vol. iii. p. 30.

understood that Fowler was with them and the removal of the President practically assured. But the senator in his agitation had mumbled and when the Chief Justice asked again for his answer, it came clearly and distinctly, "Not Guilty."<sup>1</sup> When the name of Grimes was called, the Chief Justice out of consideration for his weakness said that he might remain in his seat while he responded but the senator preferred to rise and, when his friends had helped him to his feet, he gave a verdict of "Not Guilty." The same courtesy was extended to Howard but he rose and voted with the majority. Henderson as was expected gave his voice for acquittal. The calling of the roll went on, and all votes confirmed anticipation until the name of Ross was reached. His vote was to the last a doubtful quantity, but the "Not Guilty" from his lips was a keen disappointment to the Radicals. "I felt most forcibly," he afterwards said, "in casting the vote I did that I was with my own hands digging my political grave." Trumbull's decision against conviction was known beforehand. The only hope of conviction now lay with the senators from West Virginia. But Van Winkle answered "Not Guilty" and impeachment was not sustained. Willey's vote with the majority did not affect the result. Seven Republicans had voted not to convict and the vote stood 35:19: two-thirds not having pronounced guilty, the President was acquitted on the eleventh article. The Chief Justice then directed the reading of the first article but a motion was made to adjourn to Tuesday, May 26. This the Chief Justice decided to be out of order as a previous rule of the Senate had determined that after the eleventh the vote should be taken on the other articles seriatim. An appeal was made, the decision of the chair was overruled

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<sup>1</sup> Julian's Political Recollections, p. 316. The accounts of the correspondents of the New York *Tribune* and New York *Times* are somewhat different.

and the motion was carried. So the Senate's session as a court, which had this day lasted for about an hour, was adjourned to May 26.<sup>1</sup>

The Radicals were wild with rage. The representatives returned to their chamber and soon afterwards the managers of the Impeachment asked for and obtained authority to investigate the alleged "improper or corrupt means used to influence the determination of the Senate." In this Butler was the prime mover and under the authority of the House he ransacked the telegraph offices and seized private telegrams; in an underhand way he obtained possession of private letters; he employed spies to visit Evarts's room in his absence and search his waste-paper basket in the hope of finding some clew that he might follow up; and he forced officers of banks to disclose the accounts of their customers. He plied his drag-net from May 16 to May 26 and still later but caught nothing. Yet in his speech of May 25 before the House in which he presented a preliminary report on behalf of the managers, he intimated that improper influences had been used, and in his report of July 3 he indirectly charged with corruption four of the senators who had voted for acquittal and further employed his diabolical cunning in an effort to leave a taint of suspicion on the other three. There was not a shred of evidence supporting the charge of bribery; there was no testimony to rouse for more than a brief moment the suspicion of it in the mind of an acute and fair-minded lawyer; and apparently his brother managers were ashamed of his proceedings, for no one of them joined with him in signing the final report.<sup>2</sup>

Butler's conception of humanity was so low that he could not conceive of men doing what was certain to

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<sup>1</sup> My main authority for this account is *Trial*, vol. ii. p. 484.

<sup>2</sup> Dewitt, p. 563; *Globe*, pp. 2503, 2575, 2598, 4463, 4507, 4513, Appendix, p. 471; Butler Report, No. 75, 40th Cong. 2d Sess.; G. F. Hoar's *Autobiography*, vol. i. p. 343; *The Nation*, May 21 *et seq.*



lose them social consideration and political preferment unless they were paid for it in money. But a thoroughly informed posterity raises not a breath of suspicion against any one of the seven: we know them all to have been men of unimpeachable honour. All that Butler and the newspapers, which he inspired, succeeded in doing was to injure their country's name abroad. Travelling in Germany at this time, Andrew D. White read in a German newspaper, "The impeachment has been defeated; three senators were bribed;" and one of the three named was Fessenden.<sup>1</sup> *The Nation* also told "of the bitterness of mortification which an American of distinction endured when in Germany during the Impeachment trial at finding himself an object of daily condolence on the part of his German friends touching the corruption of Senators Trumbull, Fessenden<sup>2</sup> and Grimes. . . . And there was no use in his denying it or trying to explain it."<sup>3</sup> As first impressions are apt to be deep it would surprise no one to read in a German bill of particulars, showing the mercenary character of American politics, that the verdict in the Impeachment trial had been bought.<sup>4</sup>

Between May 16 and 26 the Republican National Convention met in Chicago [May 20]. The committee

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<sup>1</sup> Autobiography, vol. ii. p. 147.

<sup>2</sup> See my characterization of Trumbull and Fessenden, vol. v. pp. 568, 598. It may be averred that honest men than Fessenden, Trumbull and Grimes never lived in any country.

<sup>3</sup> *The Nation*, Jan. 6, 1870, p. 4.

<sup>4</sup> The *Times*, *Saturday Review*, *Spectator* and E. L. Godkin's letters to the *Daily News*, kept the English public better informed. The *Saturday Review* of May 30 said: "The managers of the impeachment are with superfluous activity endeavouring to make their cause still more odious by accusing the contumacious Republican senators of personal corruption. To an American partisan it seems impossible that a conscientious vote involving a political sacrifice should have been given except for pecuniary considerations." The *Spectator* of June 6 said that there were no grounds for suspicion of corrupt practices. "Four of the 'traitorous' senators are men who would be a credit to any assembly in the world."

on resolutions refused to report a resolution condemning "the traitorous conduct" of the seven but did declare that Johnson had been "properly pronounced guilty of high crimes and misdemeanors by the vote of thirty-five senators."<sup>1</sup> During those ten days no attempt apparently was made to influence six of the recusant senators but Ross was singled out as the sole object of attack. He was charged with bribery and all conceivable threats were aimed at him,<sup>2</sup> for there were still hopes that he, and he alone of the seven, might be induced to recant. The great interest in the May 26 session of the Senate, sitting as a court of impeachment, was how he would vote. The Senate decided to have the vote taken first on the second article, then on the third: on both Ross answered "Not Guilty." Every other senator made the same declaration that he had made on the eleventh. The vote stood as before 35 for conviction, 19 for acquittal. The Senate sitting as a court adjourned *sine die*. Impeachment had been finally defeated.<sup>3</sup>

[The lesson of the Impeachment trial can hardly be separated from the lesson of Johnson's quarrel with Congress.] "The quarrel in most countries," wrote Bagehot, "would have gone beyond the law and come to blows; even in America, the most law loving of countries, it went as far as possible within the law. . . . The House impeached Johnson criminally in the hope that in that

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<sup>1</sup> C. W. Johnson's Official Proceedings of the National Republican conventions; Stanwood's History of the Presidency.

<sup>2</sup> See his speech, May 27, *Globe*, p. 2599.

<sup>3</sup> In this account Dewitt's Impeachment and Trial has been of great value to me. I have used thoroughly (I think) the Trial and the *Globe*. I have also consulted for the period *The Nation*, the New York *Tribune* and *World*; Boston *Advertiser*; Chicago *Tribune*; Memoir of B. R. Curtis, vol. i.; Life of Grimes, Salter; Ross, The Johnson Impeachment; Blaine, vol. ii.; Dunning's Essay; Burgess, Reconstruction and the Constitution; Boutwell's Reminiscences, vol. ii.; Life of Chandler; Hollister's Colfax; Warden; Schuckers; Life of Chase, Hart; Pierce's Sumner; Storey's Sumner; S. S. Cox, Three Decades; an account of Ross at Albuquerque, N.M., Boston *Evening Transcript*, Nov. 25, 1901.

way they might get rid of him civilly. Nothing could be so conclusive against the American Constitution as a Constitution as that incident. A hostile legislature and a hostile executive were so tied together that the legislature tried, and tried in vain to rid itself of the executive by accusing it of illegal practices."<sup>1</sup> The remedy of cabinet responsibility, which Bagehot by implication suggested, we have wisely not attempted to apply; but our National Conventions have taken greater care in their nominations for Vice-President. Johnson was nominated solely for his zeal and supposed courage; now, with his administration fresh in the minds of the controlling delegates, regard is paid to the mental constitution and political and social training of the candidate. Since his day the character of Vice-Presidents has been such that any one of them, had the higher office devolved upon him, would have conducted it with dignity and undoubtedly in a reasonable degree of harmony with Congress. Through the assassinations of Garfield and McKinley two Vice-Presidents since Johnson have reached the White House. Arthur so conducted affairs that he became a prominent candidate for the succeeding presidential nomination of his party. Roosevelt was nominated for a second term unanimously, received one of the largest majorities of the electoral vote on record and the largest popular majority known in our history. The Tyler-Johnson legend that a Vice-President succeeding to the presidency will quarrel with his party has apparently been laid to rest.<sup>2</sup>

These considerations dispose of the apprehensions of Trumbull and Grimes that the removal of Johnson would have had a tendency to South-Americanize our politics.<sup>3</sup> An elected President has always got on with

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<sup>1</sup> Introduction to the Second Edition of the English Constitution; see also *The Nation*, Jan. 23, 1868, p. 66.

<sup>2</sup> As to Fillmore, see vol. i. p. 301.

<sup>3</sup> Trumbull's opinion *ante*. Grimes's private letter, Salter, p. 362.

his party ; it would be almost impossible that he should find himself politically opposed by a majority of the House of Representatives and two-thirds of the Senate. Indeed such an opposition has never confronted any President except Johnson.<sup>1</sup>

The Impeachment managers did not prove their charges and the minority of the Senate undoubtedly gave a righteous judgment. The general agreement in this statement has caused many to overlook the fact that there was "probable cause" for impeachment and that it was a case about which honest men might differ.<sup>2</sup> So far as we can see the time is far distant when this extreme remedy will again be attempted ; but if it should even be considered, our House of Representatives, having the Johnson case before them, will carefully inquire whether a law has been really or only apparently violated. The theorists are, therefore, undoubtedly right in asserting that the constitutional effect of the Impeachment trial has been to strengthen the Executive Power.

Y No lawyer and no reflecting citizen can regret the Impeachment trial. The lawyer, who heard or who has read the arguments of Curtis, Evarts and Groesbeck,<sup>3</sup> must feel proud of his profession. The reflecting citizen will like to recall the memory that the high State trial, taking place in the midst of great excitement, was conducted with gravity according to the forms of law. He will recall too that the verdict, which ran counter to an aggressive majority in the legislature and an intense popular sentiment, was accepted without any disturbance, indeed with entire submission. "Few nations,"

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<sup>1</sup> With the possible exception of J. Q. Adams.

<sup>2</sup> Curiously enough this was appreciated by a rather unfriendly critic, the *Saturday Review*, which said [May 23] "If the charges had admitted of direct disproof the President would, in spite of prejudice, have been almost unanimously acquitted."

<sup>3</sup> Perhaps I should add Stanbery. He was ill however and did not do himself justice. For a characterization of Stanbery, see S. S. Cox, *Three Decades*, p. 587.



wrote Bagehot, "perhaps scarcely any nation could have borne such a trial so easily and so perfectly."<sup>1</sup>

The glory of the trial was the action of the seven recusant senators. Macaulay has immortalized seven bishops, and it was easier to disobey the mandate of the unpopular James II than to oppose the will of the American Republican party of 1868. Only after great inward trouble could these senators come to their determination. It was so easy to go the other way, to agree with the thirty-five, most of whom were honest men and some of whom were able lawyers, that interpreted the evidence and the law in favour of conviction. The average senator who hesitated, finally gave his voice with the majority, but these seven in conscientiousness and delicacy of moral fibre were above any average and, in refusing to sacrifice their ideas of justice to a popular demand which, in this case, was neither insincere nor unenlightened, they showed a degree of courage than which we know none higher. Hard as was their immediate future they have received their meed from posterity, their monument in the admiring tribute of all who know how firm they stood in an hour of supreme trial.

"It is strange," wrote John Sherman, "that the impeachment proceedings have so little effect on prices and business."<sup>2</sup> The fluctuations of gold during the trial were slight; after the first verdict, government bonds advanced.<sup>3</sup>

During the trial the President behaved with dignity. On the day of the second verdict [May 26] Stanton "relinquished charge of the War Department." Three days later the Senate almost unanimously consented to the appointment of General Schofield as Secretary of

<sup>1</sup> *L.c.*

<sup>2</sup> Sherman Letters, p. 315.

<sup>3</sup> Commercial and Financial Chronicle, Feb. 20-May 29. A contributing cause to this advance was the financial resolution of the Chicago convention.

War. But it rejected the nomination of Stanbery whom the President had re-appointed Attorney-General. The President then offered the place to Curtis who declined it, and finally Evarts was nominated and confirmed. These new members of the Cabinet possessed the confidence of Congress as well as that of Johnson and, being men of tact, were influential in establishing a *modus vivendi* between the hitherto warring powers so that peace prevailed during the remaining nine months of Johnson's administration.<sup>1</sup>

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<sup>1</sup> McPherson ; Schofield's Forty-six Years ; Memoir of Curtis, vol. i. ; Blaine, vol. ii.

## CHAPTER XXXIV

BETWEEN the days of the two votes on the articles of Impeachment the National Union Republican convention assembled in Chicago [May 20] and with great enthusiasm nominated General Grant for President by a unanimous vote. Grant's position during the ante-convention canvass had been an enviable one. Either party was willing to take him as its standard bearer. So far as he had ever had any political leanings they were Democratic. His only presidential vote had been cast for Buchanan and, had he acquired a residence in Illinois in 1860, he would have voted for Douglas.<sup>1</sup> In 1867 the radical Republicans, fearing that Grant was not sound on Reconstruction and the negro, had desired the nomination of Chase; and there were also advocates of Colfax, who, as a great friend of his wrote, "has got the White House on the brain."<sup>2</sup> Referring to Grant, Wade said, "A man may be all right on horses and all wrong on politics."<sup>3</sup> But the shrewd Republican leaders and the bulk of the party wanted Grant and showed great eagerness to get him on their side. He had however told General Sherman that he would not accept a nomination for the presidency.<sup>4</sup> On August 9, John Sherman wrote; "If he has really made up his mind that he would like to hold that office he can have it. Popular opinion is all in his favor. . . . I see

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<sup>1</sup> Personal Memoirs, vol. i. p. 215.

<sup>2</sup> Life of Bowles, Merriam, vol. ii. p. 55.

<sup>3</sup> E. L. Godkin's letter of Dec. 19, 1867, to the London *Daily News*.

<sup>4</sup> Letter of Aug. 3, 1867. Sherman Letters, p. 292.

nothing in his way unless he is foolish enough to connect his future with the Democratic party." Yet, "if Grant declines then by all odds Chase is the safest man for the country."<sup>1</sup> "So far as mortal ken can decide," wrote Bowles a month later, "Grant will take the game at a swoop."<sup>2</sup> The Democratic victories of the autumn of 1867 convinced all the sagacious Republicans of influence that their success in 1868 would be in jeopardy if they could not bolster up their failing fortunes by the great personal popularity of Grant. Fate now intervened with Johnson's stupid quarrel which drove him avowedly into their fold. He was quick to acknowledge the situation and during the Impeachment trial it became generally understood that he would accept the Republican nomination: he promptly confirmed expectation in a brief and characteristic letter of acceptance.<sup>3</sup>

Schuyler Colfax of Indiana the Speaker of the House was nominated for Vice-President on the fifth ballot, his most formidable competitor being Wade who led on every ballot until the last.

The important platform declarations were, the approval of the reconstruction policy of Congress, the denunciation as "a national crime" of all forms of repudiation and the demand that the debt of the nation be paid according to the spirit as well as the letter of the law.<sup>4</sup>

The Democratic convention was the more interesting owing to the manœuvres of George H. Pendleton and Chief Justice Chase, both Ohio men. Pendleton had served in the national House from 1857 to 1865; he was a good debater and, having a full appreciation of the comity that must obtain in a legislative body, was dur-

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<sup>1</sup> Ibid., p. 293.

<sup>2</sup> *L.c.*

<sup>3</sup> May 29, Appletons' Annual Cyclopædia, 1868, p. 745.

<sup>4</sup> On the conventions see Stanwood, A History of the Presidency; C. W. Johnson, Official Proceedings of the National Republican Convention; Blaine, vol. ii.; Appletons' Annual Cyclopædia, 1868.



ing the Civil War one of the leaders of the Democratic minority with whom the Republicans found it easy to work. In 1864 he was the Democratic candidate for the vice-presidency. Living in a refined and cultivated circle [in Cincinnati], he had an aristocratic bearing and was popularly known as "Gentleman George"; but in 1867 he began, in the opinion of his critics, to play the part of a demagogue. Having originated or, at all events, early espoused the "Ohio idea," which was to pay the principal of the 5-20 bonds of the government in greenbacks instead of coin, he came to the front as the leader of the Democratic party in the West; and the advocacy of this doctrine was thought to have powerfully contributed to Democratic success in the autumn of 1867.

That Pendleton should have been called a demagogue is hardly surprising, for he had strongly combated the act of February 25, 1862 which made the greenbacks a legal tender,<sup>1</sup> and had enforced his able argument by quoting approvingly the words of Webster, "Gold and silver currency was the law of the land at home, the law of the land abroad; there could in the present condition of the world be no other currency." But in 1867 business was bad and the pressure of taxation severe. An easy mode of relief for the western farmer and shop-keeper seemed to be the payment of the bonds in greenbacks: the bonds were held in the East and in Europe and "The same currency for the bond-holder and the plough-holder" proved an attractive cry.

Despite the imputation that a desire for the presidency was the real reason why Pendleton took up the cause of small property owners and poor men against the leisured rich, whose only needful labour was nothing more arduous than cutting off the coupons of these government bonds, he had nevertheless legal ground for his

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<sup>1</sup> *Globe*, pp. 549-551.

doctrine. Indeed according to some of the best lawyers in the country, his position was well taken. The act which made the greenbacks a legal tender authorized the first issue of the 5-20 bonds and, while expressly stipulating that the interest should be paid in coin, provided that the principal be payable in "dollars." Now it was argued that all bonds issued after the passage of the legal-tender act could be paid in lawful money of the United States. Greenbacks were lawful money and, as gold was worth from 132 to 150, it would be a foolish excess of generosity and a discrimination in favour of the rich to pay the obligations of the government in the more valuable medium, when it was not required by the letter of the law. On February 27, 1868, when John Sherman carefully discussed the subject in the Senate, there were, as a part of the whole interest-bearing debt of \$2,200,000,000,<sup>1</sup> about \$1,600,000,000 of 5-20's, or securities convertible into them, outstanding. About \$500,000,000 had become redeemable in 1867 and nearly all the balance could be redeemed within a period of five years. To pay these bonds or a part of them meant, if the "Ohio idea" were carried out, the issue of more greenbacks, and, no matter how well managed or gradual the operation might be, an inflation of the currency. Thus the scheme had two seductive sides. It presented an easy mode of getting rid of a public burden; and its necessary concomitant, inflation, would be welcome to every debtor, every owner of real estate slow of sale and to every business man and manufacturer, who associated bad times with the contraction of the currency, which had since the end of the War been effected under the policy of Secretary McCulloch. Moreover the extreme Democrats embraced the scheme enthusiastically as they regarded the debt a gigantic swindle extravagantly and corruptly incurred for the

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<sup>1</sup> Amount June 30, 1868. I have corrected slightly Sherman's figures.

waging of an unnecessary and unholy war. To them it seemed the small end of the wedge which would result in repudiation of bonds and greenbacks alike. They were logical and saw clearly what would be apt to follow the first new issue of greenbacks. But it is probable that the majority of the Democrats and the Republicans who were attracted by the new doctrine honestly desired to pay their country's and their own debts but they were averse from taking upon themselves unusual burdens in order that a large number of "bloated bondholders" might live in luxury. It must moreover be borne in mind that the Westerners<sup>1</sup> did not look upon the greenbacks as economists did. To them they were not promises to pay; they were money itself and the best money they had ever known. Before the war, though the standard of value had been gold and silver, there had been little coin except fractional silver in circulation. The circulating medium was mainly the bills of wild-cat banks: the memory of that money was enough to make people think that greenbacks, attractive in appearance, difficult to counterfeit, and of the same value in every State, were good enough for anybody. Pendleton had struck a chord that found response deep down in men's consciousness of their needs. When the convention met he was a formidable candidate, and, in the opinion of his friends, seemed certain to secure the nomination.<sup>2</sup>

Chief Justice Chase had hoped to obtain the Republican nomination and in disregard of the demands of his high place had worked for it clumsily but eagerly. He became convinced however some time between January 1 [1868] and the commencement of the Impeachment trial

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<sup>1</sup> By Westerners I mean people living west of the Alleghany Mountains.

<sup>2</sup> The literature on this subject is large and I have dipped into it with a fair degree of thoroughness. I refer especially to Sherman's speech, Feb. 27, 1868, *Globe*, Appendix, p. 180; William Endicott's letters of Oct. 4, Nov. 14, 28, 1867 printed in the Boston *Daily Advertiser*; a fair and luminous statement by the editor of *The Nation*, Aug. 6, 1868, p. 111; Blaine, vol. ii.; E. L. Godkin's letter of July 1 to the London *Daily News* of the 13th.

that he had no chance and that the prize would go to Grant. Thus frustrated, his ambition seemed to have been lulled, and for a time he showed a single-minded devotion to duty. But as early as April, feelers regarding the Democratic nomination were thrown out to him and he responded to them in the "Barkis is willin'" style. While he presided at the Impeachment trial with dignity, impartiality and correctness, his private letters, written at this time, were most unsuitable and even ludicrous. He had the indiscretion to write familiarly to Alexander Long [Cincinnati], an extreme Democrat, to Theodore Tilton the erratic editor of the New York *Independent*, to Horace Greeley, Murat Halstead of the Cincinnati *Commercial*, and James Gordon Bennett of the New York *Herald*; and to each of these men and others he revealed, beneath a verbose and simulated deprecation which would hardly deceive a schoolboy, his keen wish and growing hope for the Democratic nomination. As the day of the Convention drew near, his availability as a Democratic candidate became a matter of common knowledge. In June, William Cullen Bryant wrote to him that the tide was running so strongly in his favour in New York that it seemed impossible for the Convention of the Fourth of July to avoid nominating him for the presidency. After this auspicious development, Chase's hopes blossomed forth in public<sup>1</sup> as well as in private letters. "What in other men," wrote Godkin, "is a craving for the presidency seems to have been in Chase a lust for it."<sup>2</sup> But this should be said on his behalf. Though willing in his negotiations with the Democrats to concede everything else he held firm to his doctrine of universal negro suffrage.<sup>3</sup>

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<sup>1</sup> After the conclusion of the Impeachment trial.

<sup>2</sup> Letter of July 11 to the *Daily News*.

<sup>3</sup> Warden prints many of the private letters. See also Hart's Chase; Appletons' Annual Cyclopædia, 1868; Godkin's letters to the London *Daily News*; *The Nation*; Diary and Correspondence, S. P. Chase, Am. Hist. Assn. Rep., 1902, vol. ii.; Blaine, vol. ii.



The Democratic convention assembled in New York on July 4. During the first days the supporters of Pendleton were aggressive and confident and their confidence seemed to be well-founded. For him were all the outside demonstrations. "Biographies and portraits of Pendleton were as plenty as leaves in Vallombrosa. . . . Canvassers, button holders, talkers, touters, carousers, hotel and sidewalk orators wearing plated badges" argued and declaimed over their drinks, shouted and cheered for their Ohio boy whom they delighted to call "Young Greenback." Three hundred men from the West clad in linen dusters and linen caps, calling themselves "Pendleton's body-guard" arrived the day before the convention and marched through the streets bearing a banner on which was inscribed, "The people demand payment of the bonds in greenbacks and equal taxation.<sup>1</sup> One currency for all. Pendleton the people's nominee."<sup>2</sup> The first day of the convention was a Saturday: this was devoted to the appointment of committees. The Sunday intervening before the next session furnished a longer period than usual for negotiations in regard to the platform and candidates. The Pendleton managers had not wholly relied on street declamation and noise-making; for the real work of the convention they had brought men of weight. Among the many able and prominent delegates to the convention, none stood higher than George E. Pugh, Clement L. Vallandigham and George W. Morgan, all from Ohio.

The platform which was not adopted until the third day contained three important and unequivocal declarations: (1) All government bonds not payable by their express terms in coin ought to be paid in lawful money; there should be "one currency for the government and people, the laborer and the office-holder, the pensioner and the soldier, the producer and the bond-holder."

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<sup>1</sup> The bonds both principal and interest were not taxed.

<sup>2</sup> I have drawn this description from Godkin's letters to the *Daily News*.

(2) The government bonds ought to be taxed. (3) "We regard the Reconstruction Acts . . . of Congress . . . as usurpations and unconstitutional, revolutionary and void." The greenback plank excited the greatest enthusiasm but this may have been due to the number and activity of the Pendleton claquers.

The balloting for the presidential candidate developed the conflict between New York and Ohio. The New York delegates had consented to the Pendleton platform but were determined that Pendleton should not be the nominee, as his nomination would mean the sacrifice of all issues before the country to the one question of finance. Their candidate was Sanford E. Church, a good lawyer and a politician of the school of Marcy and Silas Wright. Other prominent candidates were President Johnson, General Hancock and Senator Thomas A. Hendricks of Indiana, a man of character and ability. Johnson's private correspondence contains many letters holding out to him the hope of the Democratic nomination, and for a time he undoubtedly laboured under the delusion that he might receive it, but every well-informed and sane thinker knew that the Democrats did not want him. He received his highest vote 65 on the first ballot. Hancock, it was said, had shown both in speech and act, while department commander in New Orleans, that he had an eye to the Democratic convention of 1868.

The whole number of votes was 317; 212 were necessary to a choice, as the two-thirds rule obtains in Democratic conventions. Pendleton led in every ballot until the sixteenth, receiving his highest vote,  $156\frac{1}{2}$ , on the eighth: this was nearly a majority and, had the majority rule obtained, he would undoubtedly have received enough votes forthwith to make him the candidate. The balloting continued for two days amid great excitement. On the last ballot of the second day (the fourth of the convention, July 8) Hancock received  $144\frac{1}{2}$  and Hendricks 87. Pendleton after his maximum vote

had steadily declined and was evidently out of the race. The night of Wednesday July 8 was devoted to the usual conferences of delegations, the endeavour being to agree on an available candidate. New York and Ohio were the pivotal States and each had a plan. That day on the eighth ballot New York had withdrawn her "favorite son" [Sanford E. Church] and voted solidly for Hendricks. On Thursday morning before the convention met, Horatio Seymour, at a meeting of the New York delegates, made a speech in favour of Chase and the delegates by 37 to 24 agreed to give him their support provided, apparently, it became clear that Hendricks could not be nominated. Eleven of the Ohio delegates were willing to vote for Chase as their second choice; and he might depend also on Maine, Massachusetts, Rhode Island, Georgia and Wisconsin. Such a formidable coalition was expected to start a stampede which would result in his nomination.

On the fifth and last day of the convention [July 9] the Ohio delegation formally withdrew Pendleton's name. The nineteenth, twentieth and twenty-first ballots were taken; Hancock and Hendricks were the leading candidates, Hancock almost holding his own and Hendricks gaining, his vote being successively,  $107\frac{1}{2}$ , 121, 132. Vallandigham and his adherents in the Ohio delegation were determined to beat Hendricks and felt that a division must be made at once. Vallandigham went to Samuel J. Tilden, the chairman of the New York delegation, and begged that the New York vote now be cast for Chase saying that he and a number of Ohio delegates would do likewise; indeed all the Ohio delegates preferred Chase to Hendricks. Tilden replied that New York must support Hendricks as long as his vote did not fall off. Vallandigham then pressed Seymour to permit the Ohio delegation to vote for him but he positively refused. Again Vallandigham implored Tilden to cast the vote of his State for Chase

or at all events to withhold its support from Hendricks, but this second appeal was of no avail.

Horatio Seymour was the permanent chairman of the convention; he would have had the support of his own State for the presidential nomination had he not a number of times declined to be a candidate. On the fourth ballot North Carolina had cast her nine votes for him whereupon Seymour had declared, "I must not be nominated by this convention. I could not accept the nomination if tendered, which I do not expect." This checked for a time the enthusiastic feeling in his favour; but after three days of balloting during hot weather, which increased the excitement and nervous tension, it was evident that Chase or Seymour was the only solution. The Chase movement as we have seen broke down. During the twenty-second ballot, when Ohio was called [July 9] General McCook on the unanimous demand of the Ohio delegation, and with the assent of Pendleton himself, proposed the name of Horatio Seymour in a stirring and complimentary speech and cast for him Ohio's twenty-one votes. Wild enthusiasm greeted this move. Cheers from delegates on the floor were echoed by cheers from spectators in the galleries. When the uproar had continued for a time, Seymour came forward to the rostrum and by a wave of his hand appealed for silence. He spoke well and with feeling — finally, "Gentlemen, I thank you, and may God bless you for your kindness to me but your candidate I cannot be." Ohio insisted on her nomination. New York acceded to the demand. Every vote, 317 in all, was cast for Seymour. Loath as he was, Seymour could do no otherwise than to make the personal sacrifice and take upon himself the burden.<sup>1</sup>

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<sup>1</sup> My authorities for this account are Blaine, vol. ii.; Appletons' Annual Cyclopædia, 1868; Warden; Life of Chase, Hart; Letter of Sam Ward to Chase, Ann. Rep. Amer. Hist. Assoc., 1902, vol. ii.; Stanwood, History of the Presidency; Godkin's letters to the *Daily News*; *The Nation*; Public Record of H. Seymour; Official Proceedings.



The Democrats nominated their best man. In Seymour ability, breeding, character were each conspicuous: all knew him for an honour to his party and to his country. Moreover two pitfalls had been avoided. The nomination of Pendleton would, in laying stress upon the "greenback" platform, have committed the Democratic party to a policy leading inevitably to repudiation of the government debt. The nomination of Chase would have been the condonation of a grossly improper action. That a Chief Justice of the United States Supreme Court, the successor of a Marshall and a Taney, should have gone a-begging and a-scheming after political power is enough in itself to sicken recollection; that his pretensions were defeated is fortunate indeed. Men at the time said that he had "dragged his silk gown in the mire." And once muddled, he must proceed to wallow. If these Republicans won't have me for a President — Oh, very well, come on you others; I'll be a Democratic candidate. The mild "insanity on the subject of the presidency" which Lincoln had remarked in him seems to have grown with the years and opportunity. Nothing in his life has so detracted from his fame; and from the general condemnation of Chase's conduct in this instance has resulted a thorough appreciation of the points of propriety and honour involved and the general recognition of an unwritten rule that the Chief Justice of the Supreme Court shall not become a candidate for the presidential office.

The accounts of the Impeachment trial and the National Conventions have carried us chronologically beyond the history of reconstruction: to this we must now return and consider the third step in Congressional reconstruction — the ratification of the constitutions.

The election in Arkansas began March 13, 1868, and continued through the 27th. The constitution was adopted by a majority of 1316;<sup>1</sup> a Republican governor

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<sup>1</sup> Gillem's reports, Report of Secretary of War, 1868, pp. 523, 534; Dunning, p. 204.

and legislature and two members of Congress were chosen. In April and May the two Carolinas, Florida and Louisiana ratified their constitutions and elected Republican congressmen and State officers.<sup>1</sup> The voters in these several States were those registered under the Act of March 23, 1867 but some revisions and additions had been made to that registration. The requirement of the law that these should be the qualified voters at the elections we are considering, worked for the Republicans in the States where no disfranchisement articles had been put into the constitutions, but otherwise against them. The States which took to the policy of disfranchisement were more severe than Congress had been with the intention and effect to increase the Republican majorities. Nevertheless it was apparent that for the present a solid negro vote meant Republican success.

The election in Georgia [April 1868] requires a special notice as she was the foremost State in accepting the situation. The preliminary canvass was exciting and was one between two pretty nearly equally divided parties, the contest for Governor being even more animated than that for or against the constitution. The Republicans nominated Bullock, who had lived in Georgia nine years, was president of an express company and of a railroad, a popular man, big, handsome, of pleasant manners.<sup>2</sup> The Democrats, after naming two men who were found to be under the disability of the Fourteenth Amendment, chose for their candidate John B. Gordon, who had commanded one wing of Lee's army in his last campaign. He was eligible as he had not held office before the war and taken an oath to support the Constitution of the United

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<sup>1</sup> This statement is based on members seated and not according to the election returns in the *Tribune Almanac*. Dunning; Report of Secretary of War, 1868; Appletons' Annual Cyclopædia, 1868.

<sup>2</sup> Avery, p. 334.

States. He was a man of high character. "At Appomattox," said an ex-Confederate soldier in 1904, "Gordon taught us not to lose faith in God, and for a quarter of a century before his death taught us to have faith in our fellow-citizens of the North."<sup>1</sup> Joseph E. Brown supported Bullock, and, in doing so, he broke with his social and personal associates and brought upon his head a shower of abuse. All parties participated in the election. In general, the Democrats were opposed to the Constitution but there was a section that advocated the Constitution and Gordon: with these Democrats Alexander H. Stephens was in sympathy. "If the Radicals continue in power in the nation," he wrote, "we could not expect to get a better State Constitution. . . . Under it, all whites as well as blacks are entitled to vote. If this Constitution should be rejected, another disfranchising a large class of whites as in Tennessee and Alabama might be put upon us." Meade telegraphed April 29 that the election had "passed off as quietly as could be expected"; there had been only "one or two serious outbreaks." The constitution was ratified by 17,973 majority, Bullock elected by 7279. The Senate had 26 Republicans, 18 Democrats; the division in the House was uncertain. A Republican speaker was declared elected although a corrected vote showed a tie. Among the Republicans were 28 negroes, at least two of whom were notoriously vicious. Compared with previous legislatures of Georgia this one was a degradation but there was a remnant of good men among both Republicans and Democrats.<sup>2</sup>

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<sup>1</sup> An oration by R. H. McKim, D.D., before the United Confederate veterans at Nashville, pamphlet, p. 6.

<sup>2</sup> Meade's despatches to Grant. Report of Secretary of War, 1868, p. 102 *et seq.*; History of Georgia, Avery, p. 383 *et seq.*; Appletons' Annual Cyclopædia, 1868, p. 308 *et seq.* Johnston and Browne, p. 495; *Tribune Almanac*. The authorities differ as to the political division in the legislature. I have followed Avery. But see Meade's classification; also Reconstruction of Georgia, Woolley, p. 94.

Mississippi has had many exciting political contests but the contest of 1868 has probably never been surpassed except by that which took place seven years later. The proscriptive clauses aroused the indignation of the Democrats who bent their whole energies to the defeat of the constitution. They used the ordinary means of political organization, a convention, an address, an open letter, newspaper articles, an enormous number of mass meetings; and to these they added intimidation of the negroes to make them vote against ratification or stay away from the polls. The important agent in this work of intimidation was the Ku-Klux-Klan, a secret organization, which issued threats and warnings to negroes who were disposed to vote for the constitution. The Republicans also had a secret order, the Loyal League, which did effective work in instructing and marshalling their black supporters. An indication of the interest is seen in the addition of over 15,000 names to the former list of registered voters, this being about one-tenth of the whole number. The general in command was informed of "*anticipated* outrages" and interference with free voting and he was kept busy hearing complaints and despatching troops whither they were desired: Federal soldiers were stationed at sixty-three different points. The election began on June 22 and continued for a number of days. The constitution was defeated by 7629 majority; the Democrats elected their candidate for governor and four of the five Congressmen, while the Republicans had a small majority in the legislature. "Fraud is charged by both parties," wrote General Gillem, "but I am satisfied the election was as fair and free from intimidation or the influence of fraud as it would be possible to secure under existing circumstances." In the dire confusion of Southern politics under the Congressional Reconstruction Acts, the despatches and reports of the generals stand out in pleasant relief as being expressions of honest men.



Gillem was a good officer and enforced the harsh law leniently but in this case his judgment was probably warped by his sympathy with the oppressed Southern people. Instances of threats to the negroes that they would be sent to Cuba and sold into slavery if they did not vote for the Constitution are on record but these must in the nature of things have been sporadic. Low as was the intelligence of the negroes they knew that they wanted to vote with the Republicans and against their old masters. Over 35,000 registered voters, twenty-two per cent. of the whole number, failed to vote. There were 13,500 fewer votes for ratification than "for a convention" at the previous November election: indeed despite the increased registration, the November affirmative vote would have ratified the Constitution. We have "a registered majority of 17,000 votes—negro votes—to overcome" said the Democratic address. This was indeed effected and the evidence in the case, in the light of the future history of the State, shows conclusively enough that the majority against the Constitution was obtained by the intimidation of negro voters.<sup>1</sup>

The personnel of the Virginia convention showed how unfortunate it was that Robert E. Lee refrained from making public what he had said so well in private. So great was his influence that his advice would probably have brought a large number of his old followers and friends to the polls and the convention would have been as good a one as that which met in Georgia. As it was, one-fourth of the registered voters neither voted on the question of convention nor for delegates to it, with the result that the majority of their body was made up of "ignorant blacks and equally ignorant or unprincipled whites."<sup>2</sup> The Constitution which they adopted pro-

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<sup>1</sup> Gillem's reports and despatches, Report of Secretary of War, 1868, p. 523 *et seq.*; Garner, p. 205 *et seq.*; Appletons' Annual Cyclopædia, 1868, p. 511.

<sup>2</sup> Schofield.

vided a severe measure of disfranchisement for white voters and required all State, city and county officers to take the iron-clad oath. While the latter section was pending General Schofield, the commander of the district, went before the convention and in a speech protesting against it said: It will be "practically impossible to carry on a government predicated upon that basis. I have been now for more than a year administering the laws in accordance with the Reconstruction Acts of Congress in this State. I have had to select and appoint registering officers as well as civil officers in the different counties throughout the State. In some of the counties I have been able to find one, and only one, in some two, and in some three, men of either race, who could read and write and who could at the same time take the oath of office." "But" so Schofield wrote to Grant [April 18, 1868] "what I said seemed not to have the slightest influence." The ignorant majority "could only hope to obtain office by disqualifying everybody in the State who is capable of discharging official duties and all else to them was of comparatively slight importance." The election had been fixed by the convention for June 2 but, as Congress had made no appropriation for the expenses of it and Schofield would not give an order defraying them out of the State treasury, the election fell through and Virginia remained under military rule.<sup>1</sup> Nor did Texas complete during 1868 the third step of reconstruction.<sup>2</sup>

The fourth step in Congressional reconstruction was the approval by Congress of the constitutions and the admission of senators and representatives from the Southern States. The Radicals were satisfied with the constitution of Alabama and in their eagerness to secure

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<sup>1</sup> Appletons' Annual Cyclopædia, 1868, p. 759; Schofield's *Forty-six Years*, p. 400; Report of Secretary of War, 1868, p. 320; Dunning, p. 207.

<sup>2</sup> Appletons' Annual Cyclopædia, 1868, p. 729.

electoral votes for the Republican candidate for President were willing to overlook the defect in the procedure which arose from a non-compliance with the provision of the Act of March 23, 1867 requiring a majority of the registered voters to take part in the election. They ignored both General Meade's statement of fact and his recommendation. "I am satisfied," he telegraphed, "the constitution was lost on its merits and I think the best thing to do would be for Congress to re-assemble the convention to revise the constitution." He believed that it was defeated because of its drastic provisions debarring white men from voting and from holding office, and that, if it were modified so as to resemble the constitutions of Georgia and Florida which did not "go beyond the requirements of Congress," it would be adopted.<sup>1</sup> But that meant delay and the Republicans were in haste. On March 10, 1868 Stevens reported from the House Committee on Reconstruction<sup>2</sup> a bill for the recognition and admission of the State of Alabama.<sup>3</sup> For the moment however Stevens failed to carry the Republican majority with him and his bill was lost.<sup>4</sup>

Arkansas proved a better rallying-ground. Her constitution had an article of severe disfranchisement and a stringent oath, and while some doubt existed whether the constitution had been fairly adopted,<sup>5</sup> the doubt was not well enough supported to stay a legislative body bent on the accomplishment of a contingent purpose. On May 8 Stevens demanded a final consideration of his bill which he had introduced the day before to admit the State of Arkansas to representation in Congress. The attitude of the Republicans is shown by his remark, "there is not a single clause in that constitution to

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<sup>1</sup> Despatches of March 9, 12, 1868. Report of Secretary of War, 1868, pp. 97, 98.

<sup>2</sup> There was no longer a joint committee.

<sup>3</sup> *Globe*, p. 1790. For the argument in favour of the bill, see p. 1818.

<sup>4</sup> March 28, *Globe*, p. 2216; Dunning, p. 209.

<sup>5</sup> Report of Secretary of War, 1868, p. 534; Dunning, p. 205.

which any one can object, unless it be some one who is opposed to freedom ;” and by Blaine’s statement, “If there is any subject which has been talked to death in this country it is the subject of reconstruction. What is wanted now is action.”<sup>1</sup> Stevens, seventy-five years old and not destined to live out the year, was in full possession of his mental powers for only three or four hours in the morning, being subject afterwards to mental as well as physical prostration ;<sup>2</sup> but his old fire and caustic wit remained. He taunted the Democrats with having been eager to admit the Southern representatives and senators but now they clamoured against the proffered boon. Physically unable to make a long speech, or else feeling sure of his following, he gave up most of his time, sharing it liberally with the Democrats and in the end he called for the previous question when the House decided to “readmit Arkansas into the Union.”<sup>3</sup>

The Senate was now sitting as a court of impeachment and while holding from time to time legislative sessions, declined for propriety’s sake to act on the bill lest such action might be construed as an attempt to pack the jury as the Arkansas senators would add two votes for the conviction of Johnson which was then well understood to be by no means certain ;<sup>4</sup> but, soon after the conclusion of the Impeachment trial, it passed the bill with an amendment, which delayed a little the final enactment. Eventually the two houses came to an agreement and their bill, after being subjected to the usual veto, became a law [June 22].<sup>5</sup> Next day the senators and a day later the three representatives from Arkansas were sworn in ; all were Republicans.<sup>6</sup>

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<sup>1</sup> *Globe*, pp. 2390, 2391.    <sup>2</sup> E. L. Godkin to London *Daily News*, April 13.

<sup>3</sup> Yeas, 110, nays, 32, not voting, 47. *Globe*, p. 2399.

<sup>4</sup> Dunning, p. 212 ; *Globe*, p. 2437.

<sup>5</sup> *Globe*, p. 3363.

<sup>6</sup> *Ibid.*, pp. 3389, 3396, 3439 ; Blaine, vol. ii. p. 286. One might infer from the *Tribune Almanac* that one representative was a Democrat, but I have preferred to follow Blaine.



On May 11 Stevens reported from his committee on reconstruction a bill to admit the States of North Carolina, South Carolina, Louisiana, Georgia and Alabama to representation in Congress. His persistence was shown in the inclusion of Alabama which, as we have seen, stood on a different footing from the other States. A motion to strike out Alabama was lost by 74 nays to 60 yeas, although a number of Republicans voted in the affirmative. Stevens allowed two days for debate and made the closing speech [May 14] when in replying to Brooks of New York who had been one of the spokesmen for the Democrats he gave expression to the dominant sentiment of the Republican party.<sup>1</sup> "The gentleman," he said, "protests against these constitutions because black men were allowed to vote. Now I advise the gentleman to become dramatized, to become the hero of a second play like that of Rip Van Winkle which is now so well played by that admirable actor Mr. Jefferson. Has the gentleman from New York been asleep for the last few years? Does he not know that when he went to sleep this country was a country of slavery and governed by a despotism? Let him now wake up; let him call his little dog 'Schneider' or anything else that will enable him to recollect that he is still the same man. He will find no despotism; he will find no slavery; he will find no bondage within the broad limits of this fair land, which God made free but which we made slave. God has again made this land free . . . by means of war and bloodshed. And I trust the Almighty ruler of nations will never again permit this land to be made slave; or in other words that He will never permit the Democratic party to gain the ascendancy. For just so much as the Democratic party shall

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<sup>1</sup> "We have got rid of nothing by the war but slavery and the faith in the possibility of secession by which the South was pervaded" are words in a thoughtful article of *The Nation*, Jan. 30, 1868, p. 84. As if that were not enough for one revolution!

again gain the ascendancy just so much will that same spirit of despotism run riot which has disgraced this nation for a century. . . . All of those states have now adopted the principle of universal suffrage. . . . What we desire is to secure in these States the maintenance of this principle . . . so that every person of requisite age within those States shall be entitled to vote.”<sup>1</sup> Stevens called for the previous question, the vote was taken and the bill passed by 109 to 35.<sup>2</sup>

Trumbull, from the Committee on the Judiciary, reported the bill to the Senate with Alabama stricken out but after a thorough debate that State was restored to it by a vote of 22:21.<sup>3</sup> Next day Trumbull endeavoured to have the Senate reverse its action but he carried with him only fifteen senators<sup>4</sup> and after the insertion of Florida<sup>5</sup> the bill was passed. Going back to the House for concurrence in this and other amendments it was then vetoed by the President but became a law June 25. The act provided that “each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama and Florida shall be entitled and admitted to representation in Congress as a State of the Union when the Legislature of such State shall have duly ratified” the Fourteenth Amendment “upon the following fundamental conditions: that the constitutions of neither of said States shall ever be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State who are entitled to vote by the Constitution thereof herein recognized.”<sup>6</sup>

<sup>1</sup> *Globe*, p. 2464.      <sup>2</sup> Not voting, 45. *Globe*; McPherson, p. 340.

<sup>3</sup> June 9, *Globe*, p. 2965. Among the Republicans voting for the exclusion of Alabama from the bill were: Conkling, Edmunds, Fessenden, Frelinghuysen, Morgan, Morrill of Vermont, and Trumbull.      <sup>4</sup> The vote was 16:24.

<sup>5</sup> Meade telegraphed the official returns of Florida, June 2, Report of Secretary of War, 1868, p. 106.

<sup>6</sup> A special condition was made regarding Georgia which for my purpose requires no mention. The act admitting Arkansas had the same “fundamental condition” but her legislature had already ratified the Fourteenth Amendment.

The legislatures of these several States met and ratified the Fourteenth Amendment and during the month of July the Senate and the House admitted their senators (with the exception of Georgia)<sup>1</sup> and their representatives. "The civil power vested in the military commander by the reconstruction acts ceased and civil authority resumed its sway."<sup>2</sup> But the troops were not withdrawn. North Carolina, South Carolina, Georgia, Alabama and Florida were in August [1868] organized into the department of the South with Meade in command; and similarly the department of Louisiana consisting of Louisiana and Arkansas was created and placed under Rousseau [July 28]. Troops were so stationed at different points throughout these States that they could be called upon to co-operate with the State authorities for the preservation of peace and for sustaining the new governments.<sup>3</sup>

On July 20 Seward as Secretary of State issued a proclamation stating that the Fourteenth Amendment was ratified; but as the phraseology which he used was not satisfactory to the Republicans, Congress by concurrent resolution recited that whereas "three-fourths and more of the several States" had ratified that amendment, they declared it to be "a part of the Constitution of the United States."<sup>4</sup>

The result of the work of Congress from March 1867 to July 1868 inclusive was the restoration of seven States. Twelve senators were added to that body; also thirty-two representatives under the apportionment of 1862 based on the census of 1860, reckoning three-fifths of the slaves: all but two were Republicans.<sup>5</sup>

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<sup>1</sup> Georgia did not elect her senators until after the adjournment of Congress.

<sup>2</sup> Meade, Report of Secretary of War, 1868, p. 79.

<sup>3</sup> Report of Secretary of War, 1868, p. 12; *Globe*; McPherson; Dunning.

<sup>4</sup> The resolution was adopted July 21, McPherson, pp. 379, 380.

<sup>5</sup> Blaine, vol. ii. pp. 284, 304. I have followed Blaine whose results are different from the *Tribune Almanac* but seem to be made up with more care.

None of them were negroes but 26 (10 senators and 16 representatives) were Northern men. Of these, one was elected as a Democrat, one came from Missouri, a third had served in the Union army, still others were foreigners by birth.<sup>1</sup> The remaining 18 were natives most of whom must have been men without social or political standing in their communities<sup>2</sup> as none such could take the iron-clad oath which was a necessary condition to admission unless a man's disabilities were removed by a special act of Congress, which indeed was done in nine cases, these men taking simply an oath to "support and defend the Constitution."<sup>3</sup> The Republicans did not need this re-enforcement in Congress but they looked with complacency upon this addition to their sure electoral votes at the approaching presidential election. Virginia, Mississippi and Texas remained unreconstructed and under military rule.

One phase of the presidential canvass of 1868, in which as has been related General Grant and Horatio Seymour were the opposing candidates, is important in the history of reconstruction — the occurrences at the South and their influence on Northern sentiment. The course of affairs in Georgia had on the whole been smooth, the white people having kept themselves under a wholesome restraint; but now race feeling overtopped regard for public opinion at the North and the Democrats with the assistance of a number of white Republicans expelled the 27<sup>4</sup> negroes from the legislature basing their action upon a technical construction of the new constitution.<sup>5</sup> While the subject was under considera-

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<sup>1</sup> Data collected for me by Matteson.

<sup>2</sup> But see *The Nation*, Aug. 6, 1868, p. 101.

<sup>3</sup> By virtue of Act of July 11. Acts of June 25, July 17, 27. *Globe*, pp. 4007, 4144, 4254, 4472, 4499, 4500.

<sup>4</sup> Two senators, 25 representatives, Avery, p. 403, but he previously gave the number as 28, p. 396.

<sup>5</sup> The vote in the House stood 83 : 23, in the Senate 24 : 11. This was in September 1868.



tion one coloured member, indulging in what would have been blasphemy in a white man but with the negro was merely a common use of scriptural phraseology, made this truly prophetic declaration: "Whenever you cast your votes against us, dis nigger will take his hat and walk right straight out, but, like Christ, I shall come again. I go to prepare a place for them. Stop Democrats; stop white folks! Draw de resolution off de table and let's go to work."<sup>1</sup> Considering that the Republican party was the dictator and that the South could gain control of her own affairs only through the action of Northern sentiment, few things could have been more impolitic than this expulsion of the negroes from the Georgia legislature.

In most of the Southern States the Ku-Klux-Klan was rampant. Started in 1866 by some Tennessee young men as a joke, this secret order had become a serious political force to reckon with. Ku-Klux work was done by societies under the names of the "Knights of the White Camelia," the "Pale Faces" and the "Invisible Empire of the South" but all of them have in records of legislation and in history been merged into the name of the original society so that it will be convenient and sufficiently exact to refer to all their operations as work of the Ku-Klux-Klan. The order attracted no attention until negro suffrage was imposed on the South by Congressional Acts when "dens" began rapidly to be organized, so that in 1868 it was supposed to have a membership of 550,000. Its apologists maintained that the order was formed to check the machinations of the Union or Loyal Leagues, secret societies which were composed of negroes under the leadership of carpet-baggers and scalawags and which wrought in the interest of the Republican party. E. L. Godkin, who in *The Nation* and in his letters to the London

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<sup>1</sup> History of Georgia, Avery, p. 402.

*Daily News* had praised and defended the Reconstruction Acts of Congress, wrote truly, "Worse instructors for men emerging from slavery and coming for the first time face to face with the problems of free life than the radical agitators who have undertaken the political guidance of the blacks it would be hard to meet with."<sup>1</sup> This mass of barbaric strength, endowed with political rights and guided by designing men, might well arouse in the Southern people a determination to use any means which promised an escape from the impending horror. "We were afraid to have a public organization," testified General John B. Gordon, "because we supposed it would be construed at once by the authorities at Washington as an organization antagonistic to the Government of the United States. It was therefore necessary in order to protect our families from outrage and preserve our own lives to have something that we could regard as a brotherhood—a combination of the best men of the country to act purely in self-defence, to repel the attack in case we should be attacked by these people [the carpet-baggers and the negroes]. That was the whole object of this organization."<sup>2</sup> Such societies as Gordon speaks of existed alongside the Ku-Klux-Klan but the Klan proper wrought in a different manner. Its object was to intimidate the negroes from voting, to terrify them into good behaviour and make them amenable in the matter of industry to the control of the whites. Playing upon the credulous fears of the negroes the Klan had a disguise of "a white mask, a tall cardboard hat, a gown that covered the whole person and when the Klan went mounted, a cover for the horses' bodies and some sort of muffling for their feet."<sup>3</sup> The Ku-Klux were probably not readers of Shakespeare, but

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<sup>1</sup> *Daily News*, Jan. 15, 1868.

<sup>2</sup> Report of the Ku-Klux Committee, p. 54.

<sup>3</sup> W. G. Brown, *Atlantic Monthly*, May, 1901, p. 637.

they had unwittingly adopted the "delicate stratagem" of Lear "to shoe a troop of horse with felt." Darkness lent itself to their operations and gave an added terror to their white robes and sheeted horses; midnight was their favourite time and they justly deserved the name given them by General Thomas, "midnight prowlers."<sup>1</sup> Negroes knew that their work was done in the "witching time of night

When churchyards yawn and hell itself breathes out  
Contagion to this world."

Among the recollections of William Garrott Brown, dating apparently from childhood, is a "yarn" of "Uncle Lewis" who told of "a shrouded horseman who rode silently up to his door at midnight, begged a drink of water and tossed off a whole bucketful at a draught. Uncle Lewis was sure he could hear it sizzling as it flowed down that monstrous gullet and readily accepted the stranger's explanation that it was the first drop he had tasted since he was killed at Shiloh." Another was: "Alec, a young mulatto who had once shown much interest in politics, had been stopped on his way from a meeting of his 'ciety' by a masked horseman, at least eight feet tall, who insisted upon shaking hands; and when Alec grasped his hand it was the hand of a skeleton."<sup>2</sup> Underneath this fantastic foolery was the dark purpose of spreading terror abroad to get the negroes to stick to their labour and stop playing at politics, to drive the carpet-baggers north and crush the scalawags. Threats were written on paper which was often adorned with "a picture of crossed swords, coffin, skull and crossbones, owl, bloody moon, a train of cars each labelled K. K. K.," and the language used was mysterious and sanguinary.<sup>3</sup> A warning from

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<sup>1</sup> Report of Secretary of War, 1868, p. 145.

<sup>2</sup> *Atlantic Monthly*, May, 1901, p. 631; see also Garner, p. 340.

<sup>3</sup> Garner, p. 340.

the Chief of a Den, who was called the Grand Cyclops was apt to be followed by a deed of violence. Obnoxious men were taken at night from their houses by masked horsemen and whipped ; and if they would not agree to desist from their work or leave the country were murdered. Negro schoolhouses and churches were burned.<sup>1</sup> This brief sketch of the Ku-Klux-Klan will help us to understand the presidential canvass of 1868 at the South ; the Klan was directly or indirectly the instigator of most of the violence.

I now propose to state some of the facts which were believed by Northern Republicans. Wade Hampton and B. H. Hill were talking wildly, editors were threatening war. The Southerners denounced the blacks, spoke incessantly of an appeal to arms, and practised assassination as a "political remedy." In October it was said the South was "more obstreperous than ever." In Saint Mary's Parish, Louisiana, a Republican Sheriff and a Republican judge were shot but no arrests of the murderers were made. In the same parish, a Republican newspaper office was sacked by a mob and the editor and printers scared away to New Orleans. In Arkansas a deputy sheriff was tied to a negro and "both were killed at one shot." In South Carolina "a colored senator standing on a platform of a railroad car" was shot in broad daylight by three men who had coolly ridden up to the train for the purpose. A scalawag member of the South Carolina House of Representatives was shot in his carriage as he was driving home. The Republican club rooms and a number of residences of

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<sup>1</sup> Besides the article of Brown and the book of Garner, I have derived this account from various other sources, chief of which is the Ku-Klux report. I have also consulted the West Virginia University documents relating to reconstruction, edited by Professor Walter L. Fleming ; The Constitution and the Ritual of the Knights of the White Camelia ; Revised and Amended Pre-script of Ku-Klux-Klan ; Union League documents. The charge of the Commander of the White Camelia is peaceful and reasonable in tone and in the line of the words of Gordon cited in the text.



Republicans in New Orleans were broken into and sacked. Governor Bullock, who had protested against the expulsion of the negroes from the legislature, declared that in Georgia "a reign of terror exists." From Louisiana, Texas, Arkansas, South Carolina, Alabama, Georgia and Tennessee came frequent reports of terrorism, rioting and repeated murders.<sup>1</sup> These statements are taken from *The Nation*, which, though strongly Republican, endeavoured to give a fair digest of the news. Similar accounts during this period were sent to the London *Daily News* by E. L. Godkin and they are essentially corroborated by official papers accompanying the Report of the Secretary of War of 1868 and by the testimony in the Ku-Klux report. The actual occurrences were frequently magnified because of the bitter presidential canvass and the "campaign lies" were largely made up of Southern outrages. Whenever a negro or a white Republican was killed the murder was said to be political; but as a matter of fact brawls between negroes, generally over a woman, were constantly being brought to a fatal termination, since they were expert in the use of their favourite weapon the razor. As for the quarrels and killing among the whites Godkin showed a true appreciation of the state of Southern society when he wrote, "The South before the War was one vast Ku-Klux-Klan."<sup>2</sup> Gentlemen used the revolver and the poor whites the bowie knife as the final argument in a controversy.<sup>3</sup> Vast numbers of old soldiers and guerrillas out of employment added to the turbulence. Desperadoes and horse thieves put on the livery of the Ku-Klux as a screen for their depreda-

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<sup>1</sup> *The Nation*, Aug. 6, Sept. 10, Oct. 22, Nov. 5, pp. 101, 204, 321, 361, 362.

<sup>2</sup> *Ibid.*, Sept. 10, 1868, p. 204. As Godkin at this time wrote most of the *Week* and the principal political editorials, I am assuming that certain characteristic expressions were his.

<sup>3</sup> See vol. i. p. 362.

tions as did illicit distillers when detected in their evasion of the excise. Political outrages were common enough, Heaven knows; but, by no means, were all the murders of negroes and white men political and the South incurred on this account much obloquy which was not her due.

By the year 1868 the Freedmen's Bureau had decidedly entered into "politics" and become a bone of contention. The institution, devised by Trumbull and supported by Fessenden, was an effective one<sup>1</sup> if properly administered, but this was impossible with the President and Congress at odds. Howard its head, the choice of Lincoln,<sup>2</sup> was by virtue of his amiability and philanthropy an excellent man for the place but his conduct of financial affairs was loose and he needed the supervision of a systematic and critical President and Secretary of War; again an impossibility, since these two had quarrelled. But on the whole the Bureau justified its establishment, until the imposition of negro suffrage on the South, when many of its agents were quick to see that political offices were more lucrative than the patient performance of administrative duties. They perceived too that the offices were open to them, since their contact with the negroes, their supervision of the labour contracts and their protection of the freedmen from real or supposed imposition on the part of the landowners, enabled them to control many votes. Many of the assistant commissioners and agents of the Freedmen's Bureau were active in the Union Leagues and became aspirants to offices, many of them succeeding in their efforts. Even before the Bureau became largely a political machine Howard [November 1867] had recommended practically its discontinuance and suggested the transfer of its educational

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<sup>1</sup> See vol. v. p. 568.

<sup>2</sup> The Freedmen's Bureau, Peirce, p. 46. But the actual appointment was made by Johnson.

work, which he thought should go on, to the Department of Education. By the Freedmen's Bureau Act passed two years previously the Bureau was to expire July 16, 1868 but some time before that date Howard came to the conclusion that dire results would ensue on its cessation and recommended its continuance for a year. A number of Southern Constitutional conventions made the same recommendation, and Congress passed an act maintaining the Bureau in force twelve months longer [July 1868.] There is no reason to doubt the single-mindedness of Howard but it is equally clear that the Southern conventions and the Republican majority in Congress had an eye mainly to the supposed interest of the Republican party.<sup>1</sup> During the canvass of 1868 the Southern people regarded the Freedmen's Bureau as a political machine operated to foist negro rule upon them while Republicans at the North deemed it a useful and even necessary institution; for they believed that the South if left to itself would go far towards the re-establishment of slavery.

Southern opinion at this time is well worth examination. When Howard made a trip through the South during August and September 1868 he was frequently told by Southern men: "All the Republicans want of the negro is just to lift themselves into power and then they care not what becomes of him. They are trying to degrade us beneath the negro from sheer malice."<sup>2</sup> General J. B. Gordon, whom the Ku-Klux committee believed

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<sup>1</sup> Bancroft, *The Negro in Politics*, p. 20; *The Freedmen's Bureau*, Peirce, *passim*; also Peirce's references to the official and other authorities, of the latter especially Herbert, *Solid South*; Bigelow, *Tilden's Writings and Speeches*; Cox, *Three Decades*; see also W. E. DuBois's article in the *Atlantic Monthly*, March, 1901; Fleming, *Documents on the Freedmen's Bureau*. The Bureau practically expired in 1869. Legally it had a narrow and insignificant life until June 30, 1872 when it was discontinued by Act of June 10, 1872. Peirce; Fleming. On the *Freedmen's Savings Bank*, see Fleming, *Documents*.

<sup>2</sup> Howard's address, *Washington Chronicle*, Oct. 1, 1868.

to be a candid representative of Southern sentiment said: "I know very well that if the programme which our people saw set on foot at Appomattox Court-House had been carried out—if our people had been met in the spirit which we believe existed there among the officers and soldiers, from General Grant down—we would have had no disturbance in the South. . . . I know it was generally felt that there was shown towards the officers and men who surrendered at Appomattox Court-House a degree of courtesy and even deference which was surprising and gratifying and which produced at the time a very fine effect. I want to say moreover that the alienation of our people from the Government—an alienation which resulting from the war, continued to some extent immediately after the war—has been increased since that time by the course which our people believe has been wrongfully pursued towards them. Whether right or wrong, it is the impression of the Southern mind—it is the conviction of my own mind, in which I am perfectly sincere and honest,—that we have not been met in the proper spirit. We, in Georgia, do not believe that we have been allowed proper credit for our honesty of purpose. We believe that if our people had been trusted, as we thought we ought to have been trusted,—if we had been treated in the spirit which, as we thought, was manifested on the Federal side at Appomattox Court-House—a spirit which implied that there had been a conflict of theories, an honest difference of opinion as to our rights under the General Government—a difference upon which the South had adopted one construction, and the North another, both parties having vindicated their sincerity upon the field in a contest which, now that it had been fought out, was to be forgotten—if this had been the spirit in which we had been treated, the alienation would have been cured. There is no question about that. But to say to our people, 'You are unworthy to



vote; you cannot hold office; we are unwilling to trust you; you are not honest men; your former slaves are better fitted to administer the laws than you are' — this sort of dealing with us has emphatically alienated our people. The burning of Atlanta and all the devastation through Georgia never created a tithe of the animosity that has been created by this sort of treatment of our people. Not that we wanted offices; that is not the point at all, though our people feel that it is an outrage to say that the best men in our midst shall not hold office. The feeling is that you have denied that we are worthy of trust; that we are men of honor; that we will abide by our plighted faith. We feel a sense of wrong as honorable men. We do not think that we have done anything in the dark. We think that when we tried to go out we did it boldly, fairly and squarely, staking our lives upon the issue. We thought we were right. I am one who thought so at the time, I thought I had a perfect right to do as I did. I am not going into that question except to say that our people were conscientious in what they did. They were conscientious when they took the obligation at Appomattox and elsewhere at the time of surrender. They felt that as honest men they ought to be trusted, and that there ought to have been an end of the thing. We had fought the contest out; we had been defeated; and we thought that ought to be the last of it. . . . By the course that has been pursued toward us since the surrender we have been disappointed, and the feeling of alienation among our people has in this way been increased more than by any other one fact."<sup>1</sup> It was the old story. The two sections did not understand one another any more than they did in 1860,<sup>2</sup> but arrogance had shifted from the South to the North. "We of the North," wrote Thurlow Weed who was still a Republican, "have

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<sup>1</sup> Ku-Klux report, p. 52.<sup>2</sup> See Dr. Lieber on this. My vol. ii. p. 489.

become as exacting and aggressive after, as Southern men were before the Rebellion.”<sup>1</sup>

Some Northern writers have maintained that the South held her fate in her own hands. If, they aver, she had accepted the situation and if her leading men had endeavoured to secure the votes of the negroes by persuasion, which was possible at first, they could have kept the control of their political affairs in their own hands. There is some truth in this statement in regard to the States where the whites outnumbered the negroes, as the course of affairs in Georgia will bear witness, but such a policy required an extraordinary degree of self-abnegation almost impossible on the part of former masters toward former slaves. The natural mode of suasion of the slave-holding lords was that employed by Benjamin H. Hill. “You well know your race is not prepared to vote,” he said. “Why do you care to do what you do not understand? Improve yourselves. Learn to read and to write; be industrious; lay up your means; acquire homes; live in peace with your neighbors and drive off, as you would a serpent, the miserable dirty adventurers who come among you, and who, being too low to be received into white society seek to foment among you hatred for the decent portion of the white race.”<sup>2</sup> Over against this was the argument of the carpet-baggers, both in public and in the secret conclaves of the Union Leagues. We freed you, they said to the negroes, but if your former masters gain control again you will be re-enslaved. “All this property that you see here,” they went on, “these lands were cleared by you; you made all these fences; you dug all these ditches; and you are the men they belong to.”<sup>3</sup> Some rascals sold the negroes red and blue painted stakes at a dollar apiece and told them if they would each stake

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<sup>1</sup> Life, vol. ii. p. 456.

<sup>2</sup> At Atlanta, July 16, 1867, Life of B. H. Hill, Hill, p. 306.

<sup>3</sup> Testimony of Pettus of Alabama, Ku-Klux report, p. 304.

out forty acres on anybody's land without interference with one another, that land would belong to them after election.<sup>1</sup> Constantly reappearing until towards the end of 1868 was the delusion that the Government would give forty acres of land to each freedman provided he acted with the Republican party. With the negroes' gratitude to the North and the enjoyment of their new-fledged freedom, their desire for land, their credulity, their likeness to children seeking immoderate indulgence, it was natural that, when they came to answer at the ballot box "Under which King Bezonian," their votes went with the carpet-baggers.<sup>2</sup>

Georgia, compared with the other Southern States, was on the whole doing so well that it was a pity she furnished campaign ammunition for the Northern Republicans. "The high-handed injustice of her legislature" in expelling the negroes, declared Godkin "has put fresh heart into every young ruffian in the State" and this in his opinion caused the Camilla riot. About three hundred Republicans mostly negroes with music and banners flying, one-half or two-thirds of them armed with guns and pistols were marching toward Camilla for the purpose of holding a mass meeting. The sheriff met them two or three miles from the town and en-

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<sup>1</sup> Testimony of Wright of Georgia and Pierce of Alabama. *Ibid.*, pp. 229, 300; Majority report, p. 217; Fleming's Documents, Freedmen's Bureau.

<sup>2</sup> On this subject in general I furnish some references made for me by D. M. Matteson. Ku-Klux report, vol. i. p. 441; vol. ii. North Carolina, pp. 9, 309, 348; vol. iii. South Carolina, pp. 14, 124; vol. iv. South Carolina, pp. 738, 806, 949, 960, 998, 1200; vol. vi. Georgia, pp. 48, 49, 285, 306, 334, 335, 340, 345; vol. vii. Georgia, p. 615; vol. viii. Alabama, pp. 88, 89, 170, 405, 406; vol. ix. Alabama, pp. 1382-1384; vol. x. Alabama, p. 1833; vol. xi. Mississippi, p. 374; vol. xii. Mississippi, p. 725; *Miss. Hist. Soc. Pub.*, vol. iv. pp. 114-116, 125-127; *Confed. Milt. Hist.*, vol. xii. pp. 295, 296, 309, 310; *Voice from the South*, pp. 39, 40; *Canby's Annual Report for 1868*, H. E. D. 40th Cong. 3d Sess., No. 1, vol. iii. pt. i. pp. 370-467, 1046; *Leigh, Ten Years*, pp. 69, 80; H. E. D. 40th Cong. 2d Sess. No. 1, vol. ii. pt. i. pp. 664, 676; *ibid.*, No. 342, pp. 53, 74; *Americans at Home*, McCrae, vol. ii. p. 72; Pamphlets Boston Public and Harvard College libraries.

deavoured to have them give over their purpose of meeting or at all events to lay aside their arms, neither of which the negroes would do but insisted on entering the town; a riot ensued. The usual partisan accounts were given but it is not of importance to sift the facts in order to ascertain who fired the first shot. One fact stands out clearly, eight or nine negroes were killed but no white men; twenty or thirty blacks were wounded and but few of the Camilla inhabitants were even slightly hurt.<sup>1</sup> Tell this story as one might, explain it with no matter what artifice, this salient fact convinced Republican voters at the North that it was a Southern outrage and, with other like occurrences, it made votes for Grant.<sup>2</sup> Godkin ridiculed the Southern accounts of these outrages by paraphrasing Artemus Ward. "We trust," he wrote, "all our readers are familiar with the late Mr. Artemus Ward's account of a fearful thrashing which he once administered to a very powerful man with whom he had an unpleasantness at some railroad station. Mr. Ward grappled with his antagonist and violently dashed him to the ground himself underneath; then he got his enemy's hand firmly twisted in his hair; the foe still showing some signs of activity Mr. Ward inserted a piece of his cheek between the foe's teeth and kept it there some time; after which if we recollect the affair

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<sup>1</sup> Appletons' Annual Cyclopædia, 1868, p. 315; New York *Tribune*, Oct. 10, 1868; *The Nation*, Sept. 24, 1868, p. 241; Avery, History of Georgia, p. 404; Meade in his annual report for 1868 said: "The evidence would seem to show that the authors of the outrage were civil officers who, under the guise of enforcing the law and suppressing disorder, had permitted a wanton sacrifice of life and blood. The opposite parties—for the affair was a political one—had by their want of judgment and their insistence on abstract rights, in the face of the remonstrances of the law officers, given these officers the opportunity of acting as they did." Report of Secretary of War, 1868, p. 81. In the Reconstruction Committee report on Georgia in 1869 the number of freedmen killed is stated at 12 or 13 and 13 wounded, besides a great many whose names could not be ascertained. House Misc. 40th Cong. 3d Sess., No. 52, p. 128.

<sup>2</sup> See current numbers of New York *Tribune* and New York *World*.



in its details, his antagonist slunk off, having ineffectually as a last resort jumped up and down on the triumphant Showman's stomach. The horrible outrages committed by the negro at the South are done in plain imitation of Ward and result in victories of an entirely similar character."<sup>1</sup> That the sarcasm in this account and the summing-up in the last words met with responsive sympathy from Northern Republicans is undoubted.

The Southern question was thus made the important issue in the presidential campaign of 1868. Seymour's position as disclosed in his letter of acceptance was one of studied moderation; he made a strong appeal to Republicans, who were displeased with the radical policy of Congress, by attempting to show that no overturn would follow upon Democratic success. "The election of a Democratic Executive and a majority of Democratic members to the House of Representatives," he said, "would not give to that party organization the power to make sudden or violent changes but it would serve to check those extreme measures which have been deplored by the best men of both political organizations."<sup>2</sup> But Seymour's conservatism was to a great extent offset by the threatening attitude assumed by his associate on the ticket, Frank P. Blair, the candidate for Vice-President. In a letter written June 30 to Colonel Brodhead, he had said, "there is but one way to restore the Government and the Constitution and that is for the President elect to declare the Reconstruction Acts null and void, compel the army to undo its usurpations at the South, disperse the carpet-bag State Governments, allow the white people to reorganize their own governments and elect senators and representatives."<sup>3</sup> Nine days after he had written this letter Blair was nominated unanimously

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<sup>1</sup> *The Nation*, Nov. 19, 1868, p. 405. I have assumed that this is paraphrased from Ward's *Thrilling Scenes in Dixie*.

<sup>2</sup> Public Record of H. Seymour, p. 345.

<sup>3</sup> McPherson, p. 381.

by the Democratic convention ; and this action, so Republicans argued, was clearly an indorsement of his exposition of the Democratic policy towards reconstruction. Grant had closed his brief letter accepting the Republican nomination with, "Let us have peace" and this was made the shibboleth of the campaign. Republicans maintained that the issue lay between "Grant and Peace" and "Blair and Revolution."

It was thought at first that the financial question would play an important part in the campaign. During the previous year, Stevens and Butler, alarmed at the growing disaffection of Republicans to negro suffrage and believing that Pendleton had hit upon a popular cry, hastened to embrace the plan of paying the bonds in greenbacks ; and a wiser and better man than either, to wit John Sherman, showed that he was influenced by the apparent strength of the movement. Shortly before the Democratic National Convention assembled, Butler prompted the passage of a resolution by the House directing the Committee of Ways and Means to bring in a bill taxing the interest on the government bonds at the rate of ten per cent. Although this was in the direction of repudiation, it was more easily defensible than the plan of discharging the principal in paper money.<sup>1</sup> Stevens was more outspoken. "If I knew that any party in this country," he declared in the House, "would go for paying in coin that which is payable in money, thus enhancing it [the debt] one half ;

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<sup>1</sup> *Globe*, p. 3588 ; *The Nation*, July 2, 1868, p. 1 ; Godkin to the *Daily News*, July 1. Butler's position had been thoroughly ventilated and his argument refuted by William Endicott in letters to the *Boston Daily Advertiser* under dates of Oct. 4, Nov. 14, Nov. 28, 1867. "General Butler," said *The Nation* of Oct. 10, 1867, "has this week received his quietus as a 'financier.' After capering about for some weeks, and helping to damage the national credit abroad, he received a terrible left-hander from somebody signing himself 'W. E.' in the *Boston Advertiser*, in a letter which shows, in contradiction to the general, that nearly every statement in his recent letter to the *Tribune* regarding the history of the United States loans was incorrect."

if I knew there was such a platform and such a determination this day on the part of any party, I would vote for the other side, Frank Blair and all. I would vote for no such swindle upon the taxpayers of this country ; I would vote for no such speculation in favor of the large bondholders, the millionnaires who took advantage of our folly in granting them coin payment of interest.”<sup>1</sup> In the canvass preceding the State election in Maine in September, the financial question was made prominent by the stumping tour of Pendleton who advocated his scheme of paying the public debt, which indeed had already been endorsed by the Maine Democratic convention. Fessenden met the issue boldly and took part in the campaign, which was spirited, the Republicans finally carrying the State by a satisfactory majority. But after this the greenback issue seems to have dwindled in comparison with that raised by the state of affairs at the South. The part which some prominent ex-Confederates had taken in the national Democratic convention enforced the Republican argument : dread was rife lest the government should pass into the hands of former “rebels and copperheads.” Seymour’s speech to the New York city rioters<sup>2</sup> was quoted against him in derision and taking it for a subject Nast made an effective cartoon entitled, “Matched ? ”<sup>3</sup> On one side, Grant was represented demanding in July 1863 the “unconditional surrender” of Vicksburg whilst on the other side Governor Seymour was at the same time addressing the Irish mob as “My Friends.” During September and October, the campaign was very animated. “I suppose it is no exaggeration to say,” wrote Godkin, “that hundreds of thousands of meetings are held every evening — that thousands of bands of ‘Boys in Blue’ with oilskin capes and torches march in procession . . . in the towns and

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<sup>1</sup> July 17, *Globe*, p. 4178.

<sup>2</sup> Vol. iv. p. 325.

<sup>3</sup> Thomas Nast, Paine, p. 103.

villages every night and that there is not a man of any note as a public speaker who has not an 'appointment' to speak somewhere every night until the 1st of November."<sup>1</sup>

That the Democrats were hopeful of success is shown by the eagerness with which their nomination was sought. And the enthusiasm engendered by their convention seemed to indicate that the country was weary of Republican rule. Pennsylvania, Ohio and Indiana held State elections in October and, to carry them, both sides made a strenuous effort; in Pennsylvania and Indiana it was a sharp contest. Pennsylvania went Republican by less than ten thousand; and Hendricks, who had accepted the Democratic nomination for governor of Indiana in the hope of carrying the State, so that he might be re-elected senator, was beaten by only 961. Ohio, a more certain Republican State than either, gave the Republican candidate only 17,000 majority. These elections, however, made the main result a practically foregone conclusion. Seymour with great energy took the stump and made a number of excellent and moderate speeches in Western New York, Ohio, Indiana, Illinois and Pennsylvania; but the tide had set against his party and his efforts to stem it were ineffectual. Grant carried 26 States receiving 214 electoral votes while Seymour had a majority in 8 that chose 80 electors. Of the late Confederate States, North Carolina, South Carolina, Florida, Alabama, Arkansas and Tennessee went for Grant; Georgia and Louisiana for Seymour. Virginia, Mississippi and Texas were, as we have seen, unreconstructed and took no part in the presidential election. The victory for Grant was not so overwhelming as the figures seem to indicate. Seymour carried New York, New Jersey and Oregon and had he received as well the votes of the "solid South,"<sup>2</sup> which

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<sup>1</sup> Letter of Sept. 19 to London *Daily News*.

<sup>2</sup> All the former slaveholding States.



were a possession of the Democrats from 1880 to 1892, he would have been elected. It was however believed by Republicans at the North that Georgia and Louisiana had been carried for Seymour by "organized assassination" and that in Louisiana fraud had come to the assistance of terror.<sup>1</sup>

The strongest factor in Republican success was the immense personal popularity of Grant; the adroit use made of the unrest and "outrages" at the South was another. That the result did not turn on the financial question is obvious enough; for New York and New Jersey, hard money States, went for Seymour whilst Ohio and Indiana where the "Ohio idea" was most influential went for Grant. Could Seymour have made his own platform and chosen his associate on the ticket, the election would have been more closely contested but no combination of circumstances could have beaten Grant. His candidacy allayed the discontent both with negro suffrage and with the high-handed rule at the South. And the result of his election was generally tranquillizing.<sup>2</sup>

The Republican accounts of the presidential canvass at the South do not exhibit the whole truth. A remarkable offset to them is the tale of General Howard, the head of the Freedmen's Bureau, a man entirely in sympathy with the policy of negro suffrage. During August and September 1868, he made a tour of the Southern States from Virginia to Texas, visiting all the members of the late Confederacy except Arkansas and Florida. He looked in upon a number of the legislatures and attended many Republican and Democratic meetings. "I addressed upward of twenty public assemblages," he said, "colored, white and mixed, and in all

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<sup>1</sup> *The Nation*, Nov. 12, 1868, p. 384; Dunning, p. 228; Blaine, vol. ii. p. 409. On the campaign generally see *The Nation*; Blaine; Godkin's letters; Appletons' Annual Cyclopædia, 1868; Stanwood; Thomas Nast, Paine.

<sup>2</sup> *The Nation*, 1868, p. 381.

this experience I did not receive a personal affront or incivility" yet I spoke my "beliefs on all topics of the day with boldness and without repression." While he noted terrorism of the coloured people in Georgia, he went in New Orleans to a Democratic meeting where a white "Seymour Club" presented to a coloured Democratic Club a large and beautiful flag and an orator made a speech full of sympathy for the freedmen. At Brenham, Texas, "the colored people seemed almost as persistent in repressing colored Democrats as the whites in repressing carpet-baggers and Loyal Leaguers."<sup>1</sup> These quotations are from an address delivered by Howard on September 29, 1868 in the Congregational Church at Washington.<sup>2</sup> The head of the Freedmen's Bureau gave a candid sympathetic account of his journey which was remarkable for its omissions as well as for its statements and he conveyed an entirely different impression from that which was derived from reading the Republican journals at the North. Nevertheless it would be wrong to conclude that the stories of Southern outrages were merely campaign documents. The truth can be learned only by a comparison of the many and often conflicting accounts; which convinces us that violence was indeed practised at the South, but was sporadic and not universal.<sup>3</sup>

Congress was displeased with the action of the legislature of Georgia in the expulsion of the negroes and when it assembled in December 1868, the Senate declined to admit the senators elect from that State. The Southern question obtruded itself everywhere, even into the counting of the electoral votes. Knowing that Georgia's vote would be a stumbling-block to the Republicans, Edmunds introduced a concurrent resolu-

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<sup>1</sup> From the nature of things I believe that such occurrences must have been rare.

<sup>2</sup> Printed in the *Washington Daily Chronicle*, Oct. 1.

<sup>3</sup> See minority report of Ku-Klux committee, p. 508.

tion, providing that it be counted conditionally and this was passed [February 8, 1869] by both the House and the Senate.

At one o'clock in the afternoon of February 10, the Senate after proper announcement entered the Hall of the House of Representatives, the Senators occupying the seats provided for them on the east side of the Hall. The President of the Senate [Wade] took the Speaker's chair and the Speaker [Colfax] sat at his left. Wade began opening the votes and handing them to the tellers, one of whom announced those of the several States as given. The count proceeded with dull uniformity until Louisiana was reached, when objection was made to the counting of her vote. And now action was had under the twenty-second joint rule which had been adopted in February 1865. The Senate retired to its Chamber and the Speaker called the House to order. Both houses acting separately decided to count the vote of Louisiana. The Senate returned to the Hall of the Representatives and the count proceeded until Georgia was reached when Benjamin F. Butler objected to counting her vote for four reasons, the chief of which was that the election had not been free and fair, the people having been deprived of their rights by force and fraud. After some demur on the ground that the special resolution made a change in the joint rule Wade ordered the Senate to retire to its Chamber. The House quickly decided without debate and by a vote of 150 : 41 that the electoral vote of Georgia should not be counted. Although debate was not in order, the subject gave rise to considerable discussion in the Senate, which evidenced a different opinion among Republicans; the gravity of their action as a precedent in the event that there should in the future be a disputed election was recognized, as the House had already communicated its action to the Senate. Finally the Senate determined by 32 : 27 that, under the special concurrent resolution, an

objection to the vote of Georgia was not in order. Notice of this vote was sent to the House and, at half-past four, the joint convention reassembled with the House and Senate at odds. Wade took the chair and stated that the objections of Butler were overruled by the Senate and the count would proceed in accordance with the concurrent resolution, the result to be stated both with and without the vote of Georgia. Butler protested and spoke for the privilege of the House. It was a scene wherein Thaddeus Stevens would have dominated his fellows but Stevens was dead<sup>1</sup> and Butler, having indeed some of the other's qualities, aspired to his place of leadership. He appealed from the decision of the President of the Senate, who refused to entertain the appeal. Then maintaining that the House was at his back, he browbeat Wade in violent language with "a manner and bearing of unparalleled insolence,"<sup>2</sup> precipitating a scene of disorder and confusion which he appeared to enjoy. Wade and the tellers proceeded in the turmoil as best they could when Butler shouted, "I move that this convention be now dissolved and that the Senate have leave to retire." Unaffected by the continued cries of "Order! Order!" he went on, "We certainly have the right to clear the Hall of interlopers." "The tellers will now declare the result," said Wade. Amid great noise and disorder Senator Conkling (one of the tellers) attempted to do this but could not be heard for the uproar. The Speaker came to the fore, appealed to members of the House to preserve order and commanded the Sergeant-at-Arms to arrest any member refusing to obey the president of the joint convention. This action induced sufficient quiet for the tellers to announce the result and Wade then said that Ulysses S. Grant had 214 votes, Horatio Seymour 80 if the vote of Georgia was counted or without Georgia

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<sup>1</sup> Stevens died Aug. 11, 1868.

<sup>2</sup> Garfield, Feb. 11, *Globe*, p. 1104.



71. "Wherefore in either case," he went on, "whether the votes of the State of Georgia be included or excluded I do declare that Ulysses S. Grant of the State of Illinois, having received a majority of the whole number of electoral votes, is duly elected President of the United States for four years commencing on the fourth day of March 1869."

Edmunds was one of the best lawyers in the Senate, and, to settle this difficult question, had proposed the plan which followed the precedents of 1821 and 1837 in the cases of Missouri and Michigan. This Butler tried to overturn for neither patriotic nor sound party reasons. Perhaps his love of notoriety and desire to create a sensation urged him to this "unmitigated ruffianism." It is doubtful whether Thaddeus Stevens would have fomented such a discord when the gain was problematic, but had he done so, his trenchant wit and parliamentary wisdom would have prompted him to conduct it otherwise; likely enough he would have led his forces to victory instead of the miserable failure that was the end of Butler's agitation of the question of privilege.<sup>1</sup>

There is no doubt that a humanitarian feeling existed in the Republican party, which was one of the influences in forcing negro suffrage upon the South, and that the people swayed by this were disposed to look with charity on the negroes' attempt to engage in political life. They made excuses for their shortcomings and believed that with experience they would gradually become better fitted to exercise the suffrage. These high motives should continually be borne in mind, for it would be easy to collect a mass of facts showing that the sole

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<sup>1</sup> My authorities are the *Globe*; Stanwood, History of the Presidency, p. 329; *The Nation*, Feb. 18, 1869, p. 122. For the twenty-second joint rule see Stanwood, p. 310. After the completion of the count and the retirement of the Senate, Butler offered a resolution protesting against the "invasion of the rights and privileges of the House." This was debated for three days and in the end laid on the table by 130 : 55.

aim of congressional reconstruction was to strengthen the Republican party.

An important consideration for the Republicans was to get hold of the State, county and municipal offices in the South and a resolution to this end, applying to the unreconstructed States, was passed by the Senate and the House at this session of Congress [December 7, 1868–March 4, 1869] without any debate whatever in either body. The district commanders in Virginia, Texas and Mississippi were ordered to remove all civil officers who could not take the iron-clad oath, and appoint others in their place who could subscribe to it. The President neither signed nor vetoed this and it became a law by not being returned to the Senate within the constitutional limit of time.<sup>1</sup> Had the resolution gone no further than I have stated, it would indeed have provided for the carpet-baggers but left the scalawags out in the cold. The Republican politicians were not unmindful of their new adherents and put in the resolution a proviso that equal eligibility to office should inhere in those, who had had their disabilities removed by Congress and taken the oath to support and defend the Constitution as provided in the act of July 11, 1868. As one looks over the list of names, from whom legal and political disabilities were removed by Acts of Congress at this and the previous session,<sup>2</sup> one might think that mercy to the whites accompanied enfranchisement of the blacks but a further examination will show that most of the men who were rehabilitated had become Republicans and that this action was clearly taken for the benefit of the Republican party at the South.<sup>3</sup>

The distribution of the offices in the unreconstructed States was the work of the politicians; but the most important act of the session,<sup>4</sup> the Fifteenth Amendment,

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<sup>1</sup> Dunning, 229; *Globe*.

<sup>2</sup> *Globe*, Appendix, 40th Cong. 2d Sess., p. 579; *ibid.*, 3d Sess., p. 331.

<sup>3</sup> Dunning, p. 229; *Globe*.

<sup>4</sup> Dec. 7, 1868–March 4, 1869.

was carried by a union of the humanitarians and the Radicals from principle with those whose main thought was how to prevail in certain States supposed to be necessary for their continued control of the government. When the Republicans came together in convention at Chicago to nominate Grant, they could not ignore the inconsistency of their forcing negro suffrage upon the South while a number of Northern States refused to adopt it for themselves. But the platform-makers were equal to the difficulty and declared that conferring the suffrage on the negroes at the South "was demanded by every consideration of public safety, of gratitude and of justice . . . while the question of suffrage in all the loyal States properly belongs to the people of those States." The triumphant election of Grant caused many to feel that this was a cowardly subterfuge; moreover the constitutional lawyers were not sure of the permanency of negro suffrage, which was sustained only by congressional acts, imposed upon an unwilling population; and the result in Georgia and Louisiana demonstrated that even States in which there were a large number of negroes could be carried for the Democrats. The Republicans in Congress were generally agreed that a third great measure (the other two being the Thirteenth and Fourteenth Amendments), one to secure to the coloured men the elective franchise, was necessary to make permanent the results of the Union victory in the Civil War. Senator John B. Henderson, who had borne a useful part in the framing and adoption of the Thirteenth, was more than any other man in Congress the hero of the Fifteenth Amendment. In March 1866, when the Senate was considering the reduction of representation to States withholding the suffrage from the negroes, he had proposed that in lieu thereof there should be no discrimination "against any person on account of color or race." "It is the proper amendment," he said. "I am aware that the Senate will vote it down

now. Let them vote it down. It will not be five years from to-day before this body will vote for it. You cannot get along without it.”<sup>1</sup> The revolution moved so fast that Henderson’s prophesied five years were reduced to three.

Many different propositions were now discussed in the Senate and the House, opinions differing widely among the majority as to the exact phraseology that should be used to embody the principle on which they were agreed. The House adopted one form and the Senate, after a long debate during an all-night session, adopted another. In the end the subject went to a committee of conference who agreed on the present amendment and their report was concurred in by both houses. Thus it reads, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.”<sup>2</sup>

Oliver P. Morton, who shared with Sumner the leadership of the Radicals of the Senate, made some interesting remarks, when the debate ran on almost the exact proposition finally adopted.<sup>3</sup> “This amendment,” he said, “leaves the whole power in the States just as it exists now except that colored men shall not be disfranchised for the three reasons of race, color or previous condition of slavery. They may be disfranchised for want of education or for want of intelligence. The States of Louisiana and Georgia may establish regulations upon the subject of suffrage that will cut out

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<sup>1</sup> March 9, 1866 ; *Globe*, p. 1283.

<sup>2</sup> I have had as usual recourse to the *Globe* for my main authority, but the summary of action in McPherson, p. 399, and of the debate in Appletons’ Annual Cyclopædia for 1869, p. 120 are useful. See also Dunning, p. 227 ; Burgess, Reconstruction, p. 216 ; Blaine, vol. ii. p. 412 ; Life of Morton, Foulke, vol. ii. chap. v. ; Pierce’s Sumner, vol. iv. p. 365.

<sup>3</sup> The proposition which Morton discussed was the same as the amendment which was adopted except that the words, “and hold office” followed the word “vote.”



forty-nine out of every fifty colored men in these States from voting, and what may be done in one of these States may perhaps be done in others. They may perhaps require property or educational tests, and that would cut off the great majority of the colored men from voting in those States and thus this amendment would be practically defeated in all those States where the great body of the colored people live. Sir, if the power should pass into the hands of the Conservative or Democratic population of those States, if they could not debar the colored people of the right of suffrage in any other way they would do it by an educational or property qualification.”<sup>1</sup>

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<sup>1</sup> Feb. 4, *Globe*, p. 863.

## CHAPTER XXXV

HAVING found it desirable in the course of the preceding pages to keep my narrative closely centred upon the subjects of reconstruction and the quarrel between the President and Congress, I have refrained from considering the foreign and financial affairs of Johnson's administration in their relative chronological order. Some reference to these is necessary before proceeding to the history of Grant's administration.

Taking advantage of our Civil War, Napoleon III sent French troops to Mexico<sup>1</sup> and subverted the Republic, of which Juarez "a full-blooded Indian but a man of character, energy and extraordinary attainments" was the constitutional President.<sup>2</sup> An assembly of Notables (whose hold on the country was due to their representing the Clerical Party which was in the minority), working under French dictation, voted to establish an empire and to offer the throne to the Archduke Maximilian, the brother of the Emperor of Austria. The Duke [born 1832] had liberal ideas and gracious manners. Having entered the navy at an early age he loved the sea and took pleasure in making voyages. He was moreover sufficiently interested in science to have prepared a scientific expedition to Brazil which he accompanied in person [1859-1860]. Before the war of 1859 he had been governor of the Austrian province of Lombardy-Venice and in a difficult situation had won popularity.

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<sup>1</sup> See vol. iv. p. 345.

<sup>2</sup> Bancroft, Seward, vol. ii. p. 420; see also W. G. Brown, *Atlantic Monthly*, June 1905, p. 768.

The offer of the Mexican throne placed him in a dilemma. His brother the emperor and all the imperial family were opposed to his acceptance of it but since the loss of Lombardy, as a result of the war of Sardinia and France against Austria, he had been growing tired of idleness. Moreover his ambitious young wife Carlotta, the daughter of King Leopold I of Belgium, was eager for Mexico, and the end of it was that he took the irrevocable step. But he was both nervous as to the issue of it and torn with grief at quitting his superb palace of Miramar on the Adriatic and bidding farewell to his dear adoring people of Trieste [April 14, 1864].<sup>1</sup>

Maximilian's New-world dominion brought him little but trouble. At the time of the surrender of Lee and Johnston [April 1865], it is true, he had a good semblance of authority which was supported by over 30,000 French and other European troops under the command of Marshal Bazaine.<sup>2</sup> But immediately thereafter, our State Department ceased its mild and respectful protests against the French intervention in Mexico in favour of explicit notifications to the French government preparing them for our firm insistence on the withdrawal of their troops. Seward's aim was to get them out peacefully, which would require careful management; for the country, the army and General Grant favoured an ultimatum and, if Napoleon met this with a refusal, were willing that our veteran troops should cross the Rio Grande and expel the French. In anticipation of such a contingency, Grant had ordered 52,000 men under Sheridan to the Mexican border.<sup>3</sup> Napoleon, in a letter to Bazaine of August 17, 1865, showed that he anticipated the possibility of an invasion of Mexico by an American force; and Bazaine, by way of preparing for

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<sup>1</sup> Gaulot, *Rêve d'Empire*; Spencer Walpole, *History of Twenty-five Years*, vol. ii.

<sup>2</sup> H. H. Bancroft, vol. vi. pp. 153, 268.

<sup>3</sup> Report of Secretary of War, 1865, vol. i. p. 88; *ibid.*, 1866, p. 48.

such a contingency, began the concentration of his troops. From Napoleon's letter it is evident that at this time he did not propose to abandon his project; on the contrary he even entertained the idea of increasing his force in Mexico.<sup>1</sup> The expressions of popular sentiment in our country were vehement. While Napoleon desired to avoid war with the United States, that desire had limits. Conscious of great strength, he would hardly have responded otherwise than defiantly to an ultimatum. And the shedding of French blood by American soldiers might have consolidated the French nation at his back. Our country, on the other hand, staggering under its burden of debt, was in no condition for another war. Seward comprehended the situation and, in meeting it, showed great cleverness. During July and August Drouyn de Lhuys, the French foreign minister, was gradually prepared, through the medium of John Bigelow, our minister at Paris, for Seward's despatch of September 6 [1865] in which it was intimated with some indirection that the people of the United States were dissatisfied with the course of France towards Mexico. Two months later he spoke more plainly. "The pressure and operations of a French army in Mexico," he wrote, "and the maintenance of an authority there resting upon force and not the free will of the people of Mexico is a cause of serious concern to the United States." Bigelow read the despatch containing these words to Drouyn de Lhuys who remarked that "he derived neither pleasure nor satisfaction from its contents."<sup>2</sup> Through his minister at Washington, the Emperor suggested to Seward that it would be inconvenient for him to recall his troops until the government of Maximilian had been recognized by the United States. Seward replied that this condition

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<sup>1</sup> Gaulot, *L'Empire*, pp. 258, 262.

<sup>2</sup> *Dip. Corr.*, 1865-1866, part iii. pp. 412, 422, 427.



was completely impracticable;<sup>1</sup> and ten days later [December 16] he sent a despatch to Bigelow in which he demanded in very polite and diplomatic language the withdrawal of the French troops from Mexico and stated positively that the United States could not recognize Maximilian's as the government *de facto*.<sup>2</sup> This brought the vacillating Napoleon to a decision. On January 15, 1866 he wrote to Bazaine that the difficulties surrounding him required him to fix a definite time for the recall of his troops and that he had come to the conclusion he must have them all home within about a year.<sup>3</sup> This decision was not at once communicated to Seward, who in March, 1866, instructed Bigelow to inform Drouyn de Lhuys frankly that the sympathies of the American people with the Mexican republic were manifesting themselves more ardently every day and that they were disposed to regard impatiently the prolonged intervention of France. He let it also be known that the government was entertaining the design of accrediting an envoy to the Republic of Mexico.<sup>4</sup>

On April 5, 1866, *Le Moniteur*, the official journal of the French empire, announced that Mexico would be evacuated during the next nineteen months;<sup>5</sup> and one week later Napoleon wrote to Bazaine directing that about 9000 men be sent home at the end of October 1866, 9000 in the spring of 1867 and 11,300 in October 1867, these detachments making the effective total of 29,300.<sup>6</sup>

Certain influences in France contributed to the success of Seward's diplomacy. The handful of Liberals in the legislative body were attacking the Emperor's Mexican venture and apart from these, the expedition had not generally been regarded with favour by thinking people

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<sup>1</sup> Dec. 6, Gaulot, *L'Empire*, p. 321.

<sup>2</sup> *Dip. Corr.*, p. 490.

<sup>3</sup> Gaulot, *L'Empire*, p. 321.

<sup>4</sup> Gaulot, *Fin d'Empire*, p. 66 ; see also Sherman Letters, p. 280.

<sup>5</sup> *Dip. Corr.*, p. 827.

<sup>6</sup> Gaulot, *Fin d'Empire*, p. 62.

in France. It was apparent by this time that it was not to be successful; that Napoleon's dream of establishing a Latin empire in the New World could not be realized. Even the imperialistic majority grumbled at the cost and were unwilling to invest more money in the bootless enterprise.<sup>1</sup> But the decisive stroke that brought the Emperor to a decision and held him to it was the despatch of Seward and the consequent action of our government.

In writing to Bazaine on January 15, Napoleon said that he had written to the same effect to Maximilian; but as a matter of fact he had not been equally precise. There were certain omissions which weakened the actual expression of his determination; therefore the announcement in *Le Moniteur* was a keen disappointment to Maximilian.<sup>2</sup> But he thought of his visit at the Palace of the Tuileries in March, 1864 and the cordial and distinguished reception given him by the Emperor of the French<sup>3</sup> and said to Bazaine: "Your Emperor, offering his hand as a guaranty of his words, promised me his support for five years. I cannot believe that he has forgotten this. His decisions made and published to-day are but by way of giving satisfaction to the United States: time will modify them."<sup>4</sup>

But the gravity of the situation could not long be disguised. Maximilian's empire depended on the support of French bayonets and French gold. It was only too true that the troops were to be withdrawn; further subsidies were refused. Gloomy as was the outlook, Carlotta did not despair, but undertook to go to France and plead her husband's cause with the Emperor. The

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<sup>1</sup> Dip. Corr.; Gaulot.

<sup>2</sup> Gaulot, *L'Empire*, p. 322; *Fin d'Empire*, pp. 7, 65.

<sup>3</sup> Gaulot, *Rêve d'Empire*, p. 274.

<sup>4</sup> *Fin d'Empire*, p. 66. Maximilian could not invoke the public and secret treaties between himself and Napoleon as he had not been able to carry out his part of them. Gaulot, *Rêve d'Empire*, p. 275, *Fin d'Empire*, p. 6.

story of this young, graceful, energetic princess is one of the saddest episodes in this ill-starred venture. When she left Mexico she was mourning the recent death of her father Leopold of Belgium; and when she arrived at Saint-Nazaire [August 6] it was to learn of the crushing defeat five weeks earlier of the Emperor of Austria at Königgrätz. With Napoleon she had an hour's interview at Saint-Cloud. We can imagine her passionate appeal that Maximilian should not be forsaken by the prince whose promises had lured him from his quiet retreat on the Adriatic to the turmoil of Mexico. A polite, cold, obstinate refusal was what she got. What else could she expect? Whatever the Emperor's fault in the beginning, how could he now repair it? He had neither money nor men for ventures oversea. He must look to his Eastern frontier and to Prussia, which since July 3 had begun to dispute with France the position of arbiter of Europe. In utter dejection, poor Carlotta sought repose at Miramar, then went on to Rome to further the negotiations for a concordat with the Pope. Grief, anxiety and despair had done their work and at her third audience with the Pope her excitement was uncontrollable and her reason fled.<sup>1</sup>

Napoleon withdrew his troops more quickly than he had promised. Twenty-six hundred departed in December 1866 and January 1867. In February 1867 the embarkation continued with regularity and on March 12 Bazaine left with the last detachment. Napoleon and Bazaine had tried to induce Maximilian to abdicate and return to Europe with the army but after some hesitation he decided to remain in Mexico. He and his Mexican soldiers were soon overpowered by Juarez. He was taken prisoner, and together with two of his generals, was tried by court martial, condemned to death and on June 19, 1867 was shot.<sup>2</sup>

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<sup>1</sup> Gaulot, *Fin d'Empire*.

<sup>2</sup> *Ibid.*

Seward exerted himself to save Maximilian and, had the execution been longer delayed, would probably have been successful;<sup>1</sup> but Juarez though entertaining a genuine feeling of respect for his noble prisoner felt that the future security of his country demanded this summary punishment of the usurper. The fair-haired prince of Hapsburg had undertaken a task that would have baffled politicians and generals more competent than he; but he was brave to the end and won the pity of the civilized world.<sup>2</sup>

Russia having notified that she desired to sell Russian America, a territory comprising 577,390 square miles, Seward and Stoeckl, the Russian minister at Washington, began negotiations in March 1867. After some haggling the price of \$7,200,000 in gold was settled on but the final approval of the Czar was necessary before the treaty could be consummated. On the evening of March 29, Stoeckl called and, finding Seward at his usual evening game of whist, said: "I have a despatch from my government by cable. The Emperor gives his consent to the cession. To-morrow, if you like, I will come to the department and we can enter upon the treaty." Seward showed his satisfaction and pushing away the card table replied: "Why wait till to-morrow, Mr. Stoeckl? Let us make the treaty to-night." Sumner, who was still chairman of the Senate committee on Foreign Relations, was sent for in order that he might at once be apprised of the transaction. Secretaries and clerks were summoned and the State Department was opened; the treaty was prepared and at four o'clock in the morning signed. That same day it was sent to the Senate and referred to Sumner's committee.

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<sup>1</sup> Bancroft; Walpole.

<sup>2</sup> In this account I have in addition to the other authorities consulted *Hist. du Second Empire, de la Gorce*, vol. iv.; C. A. Duniway, *Ann. Rep. Am. Hist. Assn.*, 1902, vol. i. p. 317 *et seq.*; Lothrop's *Seward*; Storey's *Sumner*.



March 30, 1867 ended the short session of the Fortieth Congress which had passed the supplementary Reconstruction Act of March 23. The quarrel between President Johnson and Congress was in its most acute stage and anything emanating from the administration was at first sight regarded with suspicion. The support of Sumner was vital and the necessary preliminaries to gaining it were easy as his personal relations with Seward were friendly. The senator had first heard of the project on the night when the Secretary had sent for him for counsel and support; he then expressed no opinion but took the subject into serious consideration and came to the conclusion that he would sustain the treaty. He was desirous of helping Russia to attain her end because of her friendliness to the North during our Civil War; moreover he had some idea of the value of the territory. In committee and in the Senate he became the champion of the treaty and Thaddeus Stevens used his potent influence in the same direction. Sumner reported it to the Senate during the special executive session commencing April 1, only one member of the committee, Fessenden, dissenting; he made one effective and sensible speech of three hours in favour of its ratification carrying the Senate with him by a vote of 37: 2 [April 9].

While the treaty was pending a good deal of opposition to it was manifested. The territory was said to be "a vast area of rocks and ice," not worth the money; and in any event the financial condition of the country did not warrant the expenditure of the equivalent of \$10,000,000 in paper for such a purpose. The assent of the Senate and the necessary appropriation by the House were secured mainly because it was desired that friendly Russia should not be offended. But, as everybody now knows, what was Russian America has turned out to be valuable beyond any dream of that day; and we owe its acquisition to Seward and Sumner. Its

"remarkable" peninsula stretching "far away to Kamchatka as if America were extending a friendly hand to Asia" was called Alaska; Sumner in his speech suggested this name for the whole territory and Seward adopted it.<sup>1</sup>

The negotiation of the French out of Mexico and the purchase of Alaska were great diplomatic triumphs and perhaps it would have been better for Seward's renown as Secretary of State had he rested there on his laurels. But his energy was restless and must always have something to feed on. Loyal to his chief and devoted to his party, he was so unhappy over the quarrel between the two that he had no longer any heart for affairs at home, but gave his whole force to the development of a foreign policy. He became a thorough-going expansionist and wanted to annex territory right and left. Sumner was more cautious and in his speech on the cession of Russian America expressed an opinion that was shared by practically the whole country. "There is one other point on which I file my caveat," he said. "This treaty must not be a precedent for a system of indiscriminate and costly annexion."<sup>2</sup> These were timely words, for Seward had for some time past been engaged in a negotiation for the purchase of Danish islands in the West Indies. This was brought to a conclusion by the signing in Copenhagen on October 24, 1867 of a treaty for the purchase of St. Thomas and St. John for seven and a half millions in gold. This treaty had no chance of ratification and the obvious arguments against it were enforced within a month after its signature by the visitation of these

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<sup>1</sup> Bancroft's Seward, vol. ii.; Life of Seward, F. W. Seward, vol. iii.; Sumner's Works, vol. xi.; Pierce's Sumner, vol. iv. Pierce (p. 325) gives other reasons besides those mentioned in the text which influenced Sumner. Sumner's speech as printed in vol. xi. of his works was written out and amplified after delivery. It justifies Pierce's praise of it. For the debate in the House on the appropriation of the money, see Blaine, vol. ii. p. 334.

<sup>2</sup> Works, vol. xi. p. 232.

islands by a destructive earthquake, a tidal wave and a hurricane. The House of Representatives passed by a two-thirds vote a resolution directed against their acquisition. All the members of the Senate committee on Foreign Relations were opposed to the purchase but, out of regard to the Danish minister who had conducted the negotiations with Seward, the treaty was not flatly rejected. It was not acted on while Seward was Secretary of State but was adversely disposed of at the beginning of the second year of Grant's administration.<sup>1</sup>

Seward would have been glad to annex San Domingo and Hawaii but Congress and the country did not regard these ambitious projects with favour.

An attempt of Fenians to invade Canada from New York State [June 1866] gave our State Department an opportunity to fulfil the government's duty to a country with which we were at peace. The steamer *Michigan* was ordered to the scene and arrested about seven hundred of the raiders as they were returning to Buffalo after defeat in a skirmish with Canadian volunteers. The President issued the usual proclamation and authorized General Meade to employ the land and naval forces of the country and the militia of the States to prevent military expeditions against Canada. The Brigadier-General, commanding the Irish army at Buffalo, said in his proclamation promulgating the order for its disbandment: "I had hoped to lead you against the common enemy of human freedom and would have done so had not the extreme vigilance of the Government of the United States frustrated our plans. It was the United States and not England that impeded our onward march to freedom."<sup>2</sup> Sir Frederick Bruce, the English minister at Washington, said that the United States government had "acted when the moment for acting came with a

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<sup>1</sup> Bancroft's Seward, vol. ii. ; Pierce's Sumner, vol. iv.

<sup>2</sup> Appletons' Annual Cyclopædia, 1866, p. 287.

vigor, a promptness and a sincerity which call forth the warmest acknowledgment.”<sup>1</sup>

Through our minister Charles Francis Adams, Seward pressed continually our “Alabama claims,”<sup>2</sup> but no settlement had been reached up to May 1868 when Adams resigned his position. Reverdy Johnson, senator from Maryland and an able lawyer, was appointed his successor; and, under the instructions of Seward, negotiated a treaty providing for the settlement of all pending and unsettled claims between the two countries [January 14, 1869]. As this treaty went over to Grant’s administration for consideration by the Senate, the disposition of it will then be more conveniently related.<sup>3</sup>

Johnson’s Secretary of the Treasury Hugh McCulloch had held over from Lincoln’s administration. Born in Maine he read law in Boston but on going to Indiana to practice he found, just before reaching the age of twenty-seven, a place as cashier of a bank in Fort Wayne and decided to adopt banking as his life-work. He was successful; as President of the Bank of the State of Indiana he weathered extremely well the panic of 1857, carrying his bank through the stress without suspension of specie payments, an exceptional performance not only in the West but in the whole country. Though personally unacquainted with Chase he was by him appointed Comptroller of the Currency in 1863, a position which he accepted at a pecuniary sacrifice. Here he attracted the attention of Lincoln and received, soon after his second inauguration, the appointment of

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<sup>1</sup> Life of Seward, F. W. Seward, vol. iii. p. 352; Bancroft, vol. ii. p. 494. Bruce’s letter to Seward of July 13, 1866, wherein he conveys the thanks of her Majesty as directed by her Majesty’s government. Dip. Corr., 1866, vol. i. p. 245.

<sup>2</sup> See vol. iv. p. 94.

<sup>3</sup> In this account of Foreign Affairs I have received invaluable assistance from Bancroft’s Seward. W. G. Brown’s article in the *Atlantic Monthly* for June, 1905, has also been of service.



Secretary of the Treasury as the successor of Fessenden. McCulloch was a broad-minded banker, a man of intelligence and of character above reproach. The pages of his *Recollections*<sup>1</sup> reveal to us a man of refined though simple tastes and of high aspirations, one who kept his eyes and ears open and profited by intercourse with his fellows, — a public servant of the highest order, delighting in his work.

With the close of the war the Secretary of the Treasury was obliged to raise money to pay off the arrears to the soldiers and other floating indebtedness, to fund the temporary obligations of the government and to systematize the bonded debt. Before the end of July 1865, aided by the press without distinction of party and the skilful co-operation of Jay Cooke, the agent of the government, he floated a popular loan of over five hundred millions of 7-30 notes and with the proceeds discharged the floating debt. The war may be said to have terminated on April 26, 1865 when Johnston surrendered to Sherman. Had all claims due been adjusted, the debt on April 1 would have been \$2,997,386,203.24. On September 1, 1865 it was, less cash in the Treasury, \$2,757,689,571.43.<sup>2</sup> These obligations were in various forms. The Secretary proceeded with their consolidation until by July 1, 1868 he had converted all the 7-30's and also some of the other forms of indebtedness into 6 per cent. 5-20 bonds. In his last report he recited what had been done during his administration: "Large loans have been effected; heavy revenues have been collected and some thirteen

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<sup>1</sup> Men and Measures of Half a Century.

<sup>2</sup> Both of these are from McCulloch's report of Dec. 1, 1868. I cannot account for the discrepancy. The debt was not reduced by any such amount within that time. Probably the \$56,481,924.84 cash in the Treasury should be deducted from the April 1 statement. David A. Wells, Special Commissioner of the Revenue states in his report of January 1868, that the Sept. 1 amount was the maximum.

hundred million dollars of temporary obligations have been paid or funded, and a great debt brought into manageable shape, not only without a financial crisis but without any disturbance to the ordinary business of the country." The actual reduction of the debt from April 1, 1865 to November 1, 1868 was \$470,256,650.42; "and but for the advances to the Pacific roads and the amount paid for Alaska would have been \$519,650,650.42."<sup>1</sup>

McCulloch had a well-defined policy in which he was supported by the Special Commissioner of the Revenue, David A. Wells, who had received his appointment from the Secretary of the Treasury [July 16, 1866]. Wells was industrious and able; he had a basic knowledge of economical questions, a peculiar faculty for interpreting statistics and other facts not reducible to figures, and for bringing to bear on practical legislation correct general ideas without losing sight of the necessity of modifying and adapting them when expressed in Congressional acts to suit the particular case. He was a prop to McCulloch and, by virtue of his gift of clear and positive statement, exerted a considerable influence over him: the sympathy between the two was complete. McCulloch's policy comprised the reduction of the internal taxes, a simplification and revision of the tariff involving a lowering of the duties, and the resumption of specie payments by the government. The first part was easy and with regard to it there was general agreement. "During the war era," writes Edward Stanwood, "the policy of Congress was to tax everything and to tax it up to the highest point that could be endured."<sup>2</sup> With the advent of peace came the desire to reduce the burdens of war. The Act of July 13, 1866 took off the tax on coal and pig

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<sup>1</sup> McCulloch's report for Dec. 1, 1868.

<sup>2</sup> American Tariff Controversies, vol. ii. p. 142.

iron, also on slaughtered cattle but raised the tax on cotton from 2 cents to 3 cents-per pound. It lowered the taxes on manufactures, products and gross receipts of corporations etc. It was expected that the Act would reduce taxation by 65 millions but the reduction realized did not exceed 45 millions. The Act of March 2, 1867 reduced the rate on cotton to  $2\frac{1}{2}$  cents, removed the tax on gross receipts from advertisements and toll roads, on steel of all descriptions, on certain articles of clothing and other manufactured products and exempted incomes under \$1000: the anticipated reduction of taxation was 40 millions. The Act of February 3, 1868 took off the tax on cotton. "The Act of March 31, 1868 finally removed all taxes upon goods, wares and manufactures except those on gas, illuminating oils, tobacco, liquors and articles upon which the tax was collected by means of stamps." This Act reduced the tax on all products of petroleum one-half and the Act of July 20 took it off altogether.<sup>1</sup> For the four years following the war the burden of internal taxation was lightened by about 140 millions annually.<sup>2</sup>

A reduction of the tariff proved impossible, and yet even from the protectionist point of view it ought to have been made. The high tariff acts during the war were justified by three considerations: to obtain revenue, to encourage American industry on the principle that

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<sup>1</sup> Dewey, *Financial History of the United States*, p. 394; Report of Secretary of the Treasury, 1867, pp. 256, 257; Report of Commissioner of Internal Revenue, 1867.

<sup>2</sup> Exactness is difficult. The internal revenue tax was highest in 1866 and yielded 310 millions. In 1869, it yielded 160 millions, a reduction of 150 millions; but, under the readjustment of the tax on spirits by the Act of July 20, 1868, the revenue from this source after 1868 was increased over 26 millions. In 1870, the receipts from internal revenue were higher than in 1869 by about 25 millions but the drop from 1870 to 1871 was 40 millions. Report of Secretary of the Treasury, 1867, p. 256; 1869, p. 15; Blaine, vol. ii. p. 332. The reduction in 1866-1867 was 45 millions; in 1867-1868, 75 millions more. Report of Secretary of the Treasury, 1868, p. 467; Stanwood, *American Tariff Controversies*, vol. ii. p. 146.

everything possible shall be manufactured at home by better paid labour than the European and to counter-balance the heavy internal tax, to which all manufacturers were subject, by protecting them against the lower prices of foreign products. The removal of the internal taxes ought to have been followed by a certain reduction in the tariff. But to the protectionists, simplification and revision meant the raising of duties sufficiently to shut out European goods which were underselling American; and the House Committee of Ways and Means reported a bill in their interest which "in many respects considerably increased the tariff on imported goods."<sup>1</sup> The future extravagant claims of American manufacturers were foreshadowed by Thaddeus Stevens's remark, "I look upon this bill as a free trade bill from beginning to end. It is anything but protective." This was met by Le Blond, a Democratic member from Ohio, with: "The distinguished gentleman from Pennsylvania even denounces this as a free trade bill. Great God! If he calls this a free trade bill I would like to know what he would call a protective bill."<sup>2</sup> The Committee bill was passed by the House [July 10, 1866] but the Senate postponed action on it until the next session.

Before Congress again considered the question Wells in his report of December 1866 attacked the policy of the House bill. "A general advance in the tariff," he said, "as a measure of relief to the manufacturer must, from the very necessity of the case, therefore, [referring to facts and reasons previously adduced] in a short time neutralize itself and leave the producing interests in a condition no better than before. That such was the result following the great advance of the tariff of 1864 is almost the universal testimony received by the commissioner from all parts of the country, and is indirectly

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<sup>1</sup> Stanwood, vol. ii. p. 146.

<sup>2</sup> Cited by Stanwood, vol. ii. p. 153.



substantiated by the fact, that notwithstanding the advance then given was regarded as highly protective, the representatives of the producing interests of the country, although the taxes have since 1864 been to a considerable extent decreased, and an additional supply of labor through the disbanding of the army been rendered available, are now more urgent than ever before for a further increase in the rates of duty." He further argued "that the present tariff rates are already of an extreme character and any legislation in the same direction must necessarily soon reach a limit unless the country is prepared to adopt the policy of entire prohibition and commercial non-intercourse"; and moreover "if a tariff whose average rates (nearly fifty per cent.) are higher than have ever been levied by the United States or by any other civilized nation in modern times fails to be reasonably protective, the remedy should be sought in removing the causes which have neutralized its protection rather than by increasing the average of the duties." <sup>1</sup>

Wells was instructed by McCulloch to frame a bill for the revision of the tariff and he submitted one with his report. In sending the report and bill to the Senate the Secretary said that Wells's "opinions and conclusions, with very slight exceptions, have my hearty approval." "His bill," writes Professor Taussig, "reduced duties on raw materials, such as scrap iron, coal, lumber, hemp and flax; and it either maintained without change or slightly lowered the duties on most manufactured articles." A careful re-arrangement in the rates on a number of other articles was made. It was, continues Taussig, "simply a reform measure from the protectionist point of view." <sup>2</sup> It was a proposed revision of the tariff by its friends; reform within the party. Many

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<sup>1</sup> Pp. 38, 41. The existing tariff was one of 48.58 per cent., *ibid.*, p. 38.

<sup>2</sup> *Tariff History*, pp. 176, 177.

Western Republicans were pronounced in their advocacy of lower duties and this feeling made itself more strongly felt in the Senate than in the House. On February 1, 1867 the Senate passed what was substantially Wells's bill<sup>1</sup> but it failed in the House. This was the short session, that busy session during which were passed the first Reconstruction Act and the Tenure-of-Office law. Time lacked for a consideration of the differences between the House and the Senate and a two-thirds vote for the suspension of the rules, necessary either to send the whole matter to a conference committee or to bring the Senate bill to a vote in the House, was not obtained.<sup>2</sup> We must regret that this scientific measure was not enacted ; it would probably have remained in force for some years and its operation might have influenced the country to further revision and reduction on the same lines.

No general tariff bill was enacted during Johnson's administration. But as Morrill of Vermont, a firm and consistent friend of protection, said, "the evils endured by wool growers somehow never disappear let the laws take what shape they may."<sup>3</sup> The wool industry was suffering and in order that there might be concerted action the wool growers and wool manufacturers came together in convention and in April, 1866 agreed on a schedule of duties on wool and woollens which they presented to Congress. After the general tariff bill had failed they secured, through their large influence, persistent pressure and adroit management, the enactment, [March 2, 1867] just before the expiration of the Thirty-ninth Congress, of the Wool and Woollens Act of 1867 which made a general increase of duties and was, so Stanwood writes, "a great triumph for the protective

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<sup>1</sup> The changes were mainly in the direction of higher duties.

<sup>2</sup> Taussig, p. 176; Stanwood, vol. ii. p. 151; *Globe*, pp. 402, 1541-1543, 1658.

<sup>3</sup> Cited by Stanwood, vol. ii. p. 146.

principle.”<sup>1</sup> But, as this intelligent and candid apologist for a protective tariff admits, it did not help the wool industry. “This act,” he writes, “was designed expressly to make possible the production at a profit of goods from the wool fibre. It did not effect that object, nor did it accomplish that which was equally its object, the growing of wool at a profit. On the contrary wool declined in price and the manufacture of wool was greatly depressed.” This result was an effective illustration of the correctness of Wells’s reasoning; and Stanwood adds, “Wool and woollens are always the strongest arguments of the free trader and the most difficult to answer.”<sup>2</sup>

In the public debt statement for September 1, 1865 appeared the item of 433 million United States notes, legal tenders. These were popularly known as greenbacks and were the Government’s promises to “pay to bearer dollars”; by “dollars” were meant dollars in coin. But the government was unable to redeem its notes. McCulloch announced his policy in a speech made at Fort Wayne in October 1865. “The present inconvertible currency of the United States was a necessity of the war,” he said; “but now that the war has ceased and the government ought not longer to be a borrower, this currency should be brought up to the specie standard and I see no way of doing this but by withdrawing a portion of it from circulation.”<sup>3</sup> In his first report he recommended this policy to Congress and the House of Representatives by a resolution [December 18, 1865] which was carried by 144:6 expressed its cordial concurrence in this view and pledged its co-operative action. By the Act of April 12, 1866 Congress gave the Secretary of the Treasury a large authorization for the sale of bonds and permission to retire ten millions of green-

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<sup>1</sup> Vol. ii. p. 158. He gives *ante* a succinct history of the act. <sup>2</sup> P. 169.

<sup>3</sup> Men and Measures, p. 201. The same idea was elaborated in his Report for 1865, pp. 4, 5, 9, 14.

backs within the next six months and four millions per month thereafter. Under this authorization McCulloch retired 44 millions before he was stopped by act of Congress.<sup>1</sup>

Unfortunately for the success of his policy business took a turn for the worse. "We hear the complaint from all parts of the country," said John Sherman in the Senate January 9, 1868, "from all branches of industry, from every State in the Union that industry for some reason is paralyzed and that trade and enterprise are not so well rewarded as they were. Many, perhaps erroneously, attribute all this to the contraction of the currency — a contraction that I believe is unexampled in the history of any nation: \$140,000,000 have been withdrawn out of \$737,000,000 in less than two years.<sup>2</sup> . . . It may be wise, it may be beneficial but still it has been so rapid as to excite a stringency that is causing complaint, and I think the people have a right to be relieved from that."<sup>3</sup> "Contraction," declared Senator Morton, "is the 'Sangrado' policy of bleeding the country nearly to death to cure it of a disease which demands tonics and building up."<sup>4</sup> These were well

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<sup>1</sup> Dewey, p. 344. This left 356 millions in 1868, the contraction being from the statutory limit of 400 millions. See my vol. iv. p. 428. There were also retired the 33 millions shown in the debt statement of Sept. 1, 1865. This excess over 400 millions had "been put into circulation in payment of temporary loans," and its retirement was independent of the act of April 12, 1866. In 1866 the amount of United States notes is given at 400 millions. Round numbers are almost always used.

<sup>2</sup> In his speech of Feb. 27, 1868, Sherman put the contraction at 160 millions. He arrived at this by reckoning the withdrawal and the funding of the compound interest legal tender notes as part of the contraction. Dewey writes: "During the earlier years of the issue of interest-bearing notes temporary securities had to some extent swollen the volume of currency, but later, when peace was restored, they were held almost exclusively by banks for the purposes of investment and it is very doubtful, whether they should be regarded as part of the circulating medium." *Financial History*, p. 344.

<sup>3</sup> J. Sherman, *Recollections*, vol. i. p. 434; *Globe*, p. 407.

<sup>4</sup> Dec. 16, 1868. Foulke's Morton, vol. 2. p. 83; *Globe*, p. 105. Morton's expression is after the contraction was stopped but gives his view when the Act of Feb. 4 was being discussed. See his speech of Jan. 9, 1868, *Globe*, pp. 414, 415.



considered expositions of the sentiment of the country ; and Congress by large majorities in both Houses responded with the act of February 4, 1868 suspending the further contraction of the currency.<sup>1</sup>

It is to be regretted that Congress did not support McCulloch in his plan for the resumption of specie payments. Immediately after the war the necessity and advantage of getting back to a coin basis were generally appreciated and, while business continued good, everybody was content that the necessary steps should be taken. But after the London financial panic of May 1866 a wave of commercial depression spread over England and the rest of Europe and during the last half of 1867 extended to this country. Coincidentally with our share in this general derangement of business, we were feeling the results of the vast destruction of property by our war, of reckless speculation and extravagant living. A reaction from the inflated war prices took place, and, in the adjustment to new conditions, buoyant activity, quick sales and large profits ceased to be the order of the day, and in their stead appeared the disagreeable necessity of returning to the old methods of industry, frugality and good management. The change was inevitable and ought not to have been charged to the contraction of the currency. But business men and manufacturers regretted the flush times of the war and were quick to lay the present depression at McCulloch's door. They were apt to be in debt, and when informed on the high financial authority of John Sherman that the currency had been contracted 140

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<sup>1</sup> The bill passed the House on Dec. 7, 1867 by 127 : 32, Allison, Banks, Bingham, Boutwell, Butler, Logan, Schenck, Stevens, J. F. Wilson voted aye ; Blaine, Dawes, Garfield, Randall, no, *Globe*, p. 70. In the Senate, the vote on an amended bill on Jan. 15, 1868 was 33 : 4. Conkling, Ferry, Morgan and Patterson (N.H.) were the four. Bayard, Chandler, Edmunds, Fessenden, Grimes, Morrill (Vt.) and Sumner were among the sixteen absent. *Globe*, p. 537. The Conference committee restored the House bill which was passed. The President let it become a law without his approval.

millions in less than two years they indignantly imputed to this cause the decrease in price of their property and the raising of the face value of their debts. Thus was developed the party that demanded the payment of the 5-20 bonds in greenbacks and a large issue of these for the purpose. Congress refused to go so far as this, but in suspending the withdrawal of the United States notes it went a certain way towards meeting the prevailing temper.

McCulloch and Wells (who was in full accord with his chief on this question) showed clearly in their reports the inconvenience and danger of an inconvertible paper currency. In his report of December 1, 1868 McCulloch enforced his argument by a quotation from Webster. "A disordered currency," Webster said in the Senate May 25, 1832, "is one of the greatest of political evils. It undermines the virtues necessary for the support of the social system and encourages propensities destructive of its happiness. It wars against industry, frugality and economy; and it fosters the evil spirits of extravagance and speculation. Of all the contrivances for cheating the laboring classes of mankind, none has been more effectual than that which deludes them with paper money. This is the most effectual of inventions to fertilize the rich man's field by the sweat of the poor man's brow. Ordinary tyranny, oppression, excessive taxation, these bear lightly on the happiness of the mass of the community, compared with a fraudulent currency and the robberies committed by depreciated paper."<sup>1</sup> McCulloch and Wells furnished good reasons for the policy of contraction and showed how it could be managed without serious detriment to the business interests of the country. In the nature of

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<sup>1</sup> Webster's Works, old ed., vol. iii. p. 394. My quotation differs somewhat from McCulloch. These words of Webster were frequently quoted in the financial discussions which continued to 1876. They were quoted by Sherman in his speech in the Senate, March 6, 1876.

the case the debtor must suffer somewhat in a return to specie payments even as the creditor had suffered by the Legal-Tender Act of 1862. But the Secretary was a practical man and kept in touch with Wall Street and the financial condition of the country. Moreover he was by adoption a Westerner and understood the needs of the great Mississippi Valley where was his home and from whence came the loudest complaints against his policy. Discretionary power was entirely safe in his hands. At times he did not withdraw the full amount of legal-tenders for which he had authority. He was convinced that the business interests of the country suffered not a whit from the contraction and that a much larger amount of United States notes might have been retired without injury.<sup>1</sup>

Wells in his report of December 1866 showed that the existing circulation exceeded 700 millions whilst that in 1857 under the free system of State banking was less than 215 millions. In January 1868 he called attention to the fact that the fall in prices of at least 10 per cent. was equivalent "to a large addition to the machinery of exchange before existing." And he might have mentioned another circumstance. Business during the war was done almost entirely for cash, but now it was reverting to the former method of credit, notes of hand together with cheques and drafts providing, as they do now, the major part of payments in business transactions.<sup>2</sup> Thus the effect attributed to contraction was partly imaginary. McCulloch thought that if it had not been for the monthly statements of the public

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<sup>1</sup> Men and Measures, p. 211.

<sup>2</sup> "Statistics show that in commercial countries a very large proportion of all transfers is by book accounts and notes, and more than nine-tenths of all the residue of payments is by checks, drafts and such paper tools of exchange. Of the vast business done in New York and London, not five per cent. is done with either paper money or gold and silver but by the mere balancing of accounts or exchange of credits." Speech of John Sherman, March 6, 1876.

debt, a system peculiar to the United States, men would not have known that contraction was going on. It is true that at certain times of the year money was scarce and at all times the rate west of New York was high, 9 per cent. being the prevailing rate for discounts of commercial paper and 10 per cent. the rate on mortgages while money in Wall Street was loaned on call at a low rate. In the autumn when the crops were being moved the stringency everywhere was apt to be acute. By men in debt and by men whose business was dull, all these unwelcome features were charged to contraction, though, as a matter of fact, other causes were largely responsible. Contraction with a view to resumption of specie payments was a remedy which could not be applied without some disagreeable consequences at first, but these were well worth undergoing for the sake of eventual relief.

In a speech in the House James A. Garfield explained how many evils would be corrected when we got back to a specie basis. "When the money of the country is gold and silver," he said, "it adapts itself to the fluctuations of business without the aid of legislation. If at any time we have more than is needed, the surplus flows off to other countries through the channels of international commerce. If less, the deficiency is supplied through the same channels. Thus the monetary equilibrium is maintained. Not so however with an inconvertible paper currency. Excepting the specie used in the payment of customs and the interest on our public debt we are cut off from the money currents of the world. Our currency resembles rather the waters of an artificial lake which lie in stagnation or rise to full banks at the caprice of the gate-keeper. Gold and silver abhor depreciated paper money and will not keep company with it. If our currency be more abundant than business demands, not a dollar of it can go abroad; if deficient not a dollar of gold will come in to supply



the lack. There is no legislature on earth wise enough to adjust such a currency to the wants of the country.”<sup>1</sup>

One of the potent forces contributing to the financial derangement of 1867–1868 was the inconvertible currency. It had been an incentive to speculation throughout the country which had found many victims and it fostered the reckless and unscrupulous stock-gambling which was still going on in Wall Street.<sup>2</sup> A return to specie payments would not stop Wall Street operations but it would give a steadiness to everything in trade and finance. It would be a boon to the farmer, to the labourer, to the large number of persons on fixed salaries and, in the end, to the same merchants and manufacturers who were now clamouring against a necessary step to its consummation. In fact the business distress was more apparent than real; and despite hard sales, diminished profits and close money, everything was tending towards a revival. The wheat and corn crops from 1866–1868 inclusive had been good; the wheat product of 1868 was so large that heavy stocks accumulated in Chicago and Milwaukee for which there was no foreign demand. In 1867 and 1868 the cotton crop was good. In his report of January, 1869 Wells enumerated the facts which gave earnest of prosperity. Since July 1, 1865 one million immigrants had come to this country. There had been a marked gain in the number of cotton spindles in operation. The production of pig-iron, a sensitive barometer of trade, had steadily increased; and so had the production of anthracite coal. From 1864 to 1867 there had been an expansion of tonnage on the great inland lakes. From 1865 to 1868 inclusive nearly 8000 miles of new railroad had been constructed. There was an increased move-

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<sup>1</sup> *The Nation*, June 4, 1868. The speech was delivered May 15, *Globe*, p. 2482.

<sup>2</sup> See Charles F. Adams, Jr., *A Chapter of Erie* (1869); Henry Adams, *The New York Gold Conspiracy in Historical Essays*.

ment on the railways, an increased extension of the telegraphic system and there had been a reduction of State debts. Although a certain financial depression prevailed, it was not so severe as that in England and France. No doubt can exist that when Congress stopped the contraction of the currency, the business of the country was adjusting itself to it. The policy had a sound basis and if it had been given a fair trial, would have worked out to a successful issue. The very profitable business years from 1869 to 1872 were a signal demonstration of the correctness of Wells's analysis and if that business could have been done on a specie basis, the panic which came in 1873 would undoubtedly have been postponed and its dire effects mitigated.<sup>1</sup>

The demoralization of a paper money basis was fully recognized by McCulloch and Wells. "The law of legal tender," wrote Francis A. Walker and Henry Adams, "was an attempt by artificial legislation to make something true which was false."<sup>2</sup> McCulloch in his last report [December 1, 1868] showed his thorough agreement with this opinion; and, while still believing that his policy of contraction was "the true solution of our financial problem," yet, as Congress had emphatically condemned it, he recommended certain other measures to do away with the "dishonored and disreputable currency": "specific contracts to be executed in coin should at once be legalized;"<sup>3</sup> and Congress should enact that after January 1, 1871 the greenbacks "cease to be a legal tender on any contract, or for any purpose whatever, except Government dues."

Resumption may have been possible before the panic of 1873. No plan suggested was as well adapted to

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<sup>1</sup> Before writing this I carefully considered Stanwood's argument, vol. ii. p. 163.

<sup>2</sup> H. Adams, *Historical Essays*, p. 309. I cited this in my vol. iii.

<sup>3</sup> The Senate passed such a bill but the House refused to concur, Jan. - July, 1868, *Globe*, pp. 552, 2587, 4494.

bring it about as McCulloch's contraction policy but its success depended on rigid adherence to the plan, and this would have required nerve on the part of both Congress and the country. At the time immediately following the war, when the country was so eager to get back to specie payments, people would listen with approval even to Greeley's suggestion: "The way to resume is to resume"; let the Government resume tomorrow and redeem the greenbacks as long as its 70 millions of coin holds out.<sup>1</sup> It was not realized then that with the price of gold ranging from 130 to 150 it would be impossible thus to bring to par 356 to 400 millions United States notes. It was argued however, that if every one who held greenbacks felt sure that he could get gold for them on demand, he would never present them for payment. An anecdote which went the rounds convinced many, on whom sober argument was lost. A Frenchman, disturbed at a run on the Savings Bank where he had deposited his hard-earned savings, went thither in the crowd to draw his money, reached in due time the paying teller's window and was promptly paid. The unlooked-for result drew forth this remark, "If I can't get my money, then I want it but if I can get it, then I don't want it."

Another plan was that of Sherman and Morton, who opposed contraction of the currency, and recommended patient waiting until the development of industries and advent of prosperity raised our credit and gradually advanced the value of our currency to the specie standard. This process was to be assisted by some mild and cautious legislation. The objection to contraction by John Sherman, an abler man than McCulloch and as

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<sup>1</sup> Dewey, p. 335; Life of Morton, Foulke, vol. ii. p. 90. The amount of coin in the Treasury first exceeded 70 millions on May 1, 1866, \$76,676,000. The maximum amount in 1867 was on Jan. 1, \$131,737,000. The maximum amount in 1868 was also on Jan. 1, \$108,430,000. April 1, 1869 the amount was \$104,203,000.—*Com. and Finan. Chronicle.*

good a financier, must be regarded as important although the less so perhaps, because he was at this time making the worst slip on the financial question of his career. He declared that the 5-20 bonds could be legally paid in greenbacks although he opposed a further issue of notes; and he practically proposed to hold the threat of discharging the debt in United States notes over the bondholders to induce them to exchange a 6 per cent bond for a 5 per cent which should be made specifically payable in coin.<sup>1</sup> Sherman later admitted in his *Recollections*<sup>2</sup> that this was a mistake on his part but he still held that he was right in opposing the policy of contraction, although he himself was in 1875 criticised as a contractionist for his resumption law enacted in January of that year. He moreover laid stress on the fact that the legal tender notes were a debt of the government on which no interest was paid whereby a considerable saving was made. But McCulloch and Wells showed that such economy was "penny wise pound foolish."

After giving due heed to Sherman's and Morton's arguments, I feel sure that McCulloch was on the right track and, if Lincoln had remained President, he would probably have received the support necessary to carry his policy forward to a satisfactory consummation. But he was part of a discredited administration; the quarrel between the President and Congress deprived him of a proper backing, and Johnson, whose notions on finance were crude and unsound,<sup>3</sup> did not agree with his Secretary.

It is a fair criticism of McCulloch's policy that his eagerness to accomplish resumption under his own administration caused him to proceed more rapidly than popular sentiment, considering all the circumstances,

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<sup>1</sup> See especially his Senate speech of Feb. 27, 1868.

<sup>2</sup> Vol. i. p. 439.

<sup>3</sup> See his message of Dec. 9, 1868.



could be expected to follow and to blind himself to any possible advantage in keeping back his operations to some extent, in view of the coming prosperity, which he foresaw as well as Sherman and Morton. In other words, he was sound in theory but not altogether expedient in method. Had he been as acute as was Sherman in 1875, he would have provided for an issue of national bank notes under a free banking system to take the place of the greenbacks withdrawn, thus relieving "some people from an idle fear of an improbable event"<sup>1</sup> [disaster arising from the retirement of 82 millions of greenbacks]. But McCulloch maintained a large gold reserve as Sherman afterwards did as Secretary of the Treasury.<sup>2</sup>

McCulloch was somewhat imprudent in his manner of presenting his views to Congress. *The Nation* which sympathized with his policy said, "He has not shown sufficient faith in the people's desire to return to specie payments of their own free will. All the measures proposed by him have been coercive."<sup>3</sup> Moreover nearly all Western men believed in the "battle-scarred and blood-stained greenbacks"<sup>4</sup> and did not like to hear them called "a dishonored and disreputable currency." McCulloch was unpopular and so was his commissioner Wells, who lectured Congress like a school-master. But the two uttered much sound doctrine and undoubtedly had much influence on thinking men.

McCulloch endeavoured to conduct affairs on business principles. He wrote that he neither appointed nor dismissed any one in the Treasury Department "on party or personal grounds." He incurred the displeasure of Sumner for appointing revenue officers at the South

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<sup>1</sup> Words of Sherman in a letter of Jan. 10, 1875, *Recollections*, vol. i. p. 520. This would have met with opposition from both contractionists and expansionists, see Dewey, p. 385.

<sup>2</sup> The annual coin production of the country was about 75 millions.

<sup>3</sup> Dec. 24, 1868, p. 520.

<sup>4</sup> Dewey, p. 389.

who could not take the iron-clad oath but Sherman came to his defence, showing that only in this way had he been able to obtain competent men.<sup>1</sup> But the service was impregnated with the spoils system and a Secretary of the Treasury could do little for its reform without the sympathy of the President and of Congress. Wells in his report of December, 1866 expressed the opinion that "not one-half of the legitimate internal revenue was collected under existing laws"; and in January 1868 he returned to the subject speaking of the "fraud and incompetency in official position" and of its demoralizing influence on the community.<sup>2</sup> One of the most prolific opportunities for stealing was in the collection of the Whiskey tax; and in order to diminish the temptation to dishonesty Wells recommended that the tax be reduced from \$2.00 to 50¢ per gallon. On July 30, 1868 Congress made such a reduction with beneficial results.<sup>3</sup> But here again the evil was due mainly to the practice of giving-out administrative offices as rewards for political work. McCulloch, in his report of December 1, 1868, thought that the internal revenue ser-

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<sup>1</sup> *Men and Measures*, pp. 233, 249.

<sup>2</sup> *The Nation* thus elucidated Wells's statement: "What he asserts is that nearly \$266,000,000 due to the Government has in one year either not been collected through the incompetency of its agents, or has been collected by them and either stolen by them or divided between them and the persons owing it. This is really an awful statement, especially when coupled with the account he gives of the almost absolute honesty and efficiency of the administrative machinery of the leading European countries." *The Nation*, Jan. 16, 1868, p. 48. I present Wells's statement as the estimate of an expert without belief in its absolute accuracy but it emphasized the undoubted fact that there was much incompetency and dishonesty in the service.

<sup>3</sup> Receipts from spirits 1867, 36 millions; 1868, 19 millions; 1869, 45 millions; 1870, 56 millions. Part of the falling-off in 1867-1868 was due to the expected reduction. My authorities for this account of financial affairs are, the reports of McCulloch and Wells; *Men and Measures*, McCulloch; John Sherman, *Recollections*, vol. i.; Blaine, vol. ii.; Dewey, *Financial History*; Stanwood, *American Tariff Controversies*; Life of Morton, Foulke, vol. ii.; Taussig, *Tariff History*; *The Nation*, 1868; Appletons' *Annual Cyclopædia*, 1866, 1867, 1868.

vice might be rescued from its demoralized condition by the passage of the measure introduced by Thomas A. Jenckes, a representative from Rhode Island, entitled, "A bill to regulate the civil service and promote the efficiency thereof." This provided for a Civil Service Commission, under whose direction open, competitive examinations of applicants for office should be held; officials should be appointed from the highest grade of such qualified persons; merit should govern promotions; postmasters and presidential officers were excepted from the law. But the bill met with little favour in Congress and never came to a square vote in the House.<sup>1</sup> Had it been enacted, it would have inaugurated substantially the system in force at the present day.

Johnson deserves credit for resisting the pressure exerted mainly by his Democratic friends, for the displacement of Seward and McCulloch; moreover he did not interfere with the conduct of the important affairs of their Departments. A confidential note from McCulloch with the enclosure of a clipping from the New York *Tribune* showed the Secretary's high sense of duty and his continuance in office afterwards may be looked upon as evidence of the President's appreciation of a good public servant. "Although not directly asserted," he wrote, "it is clearly intimated that I am warring against your administration, by distributing the patronage of the Treasury Department among your enemies, for the purpose of strengthening myself and my financial policy with Radicals. Nothing can be more unjust than this statement or insinuation. In the discharge of my duties, as Secretary of the Treasury, I have had no other aim than to sustain your administration and promote the interest of the people. The charge in whatever form it may be put, that I

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<sup>1</sup> Dec. 1865-June 1866, *Globe*, pp. 98, 1342, 1365, 3141; Dec. 1866-Feb. 1867, *Globe*, pp. 10, 109, 835, 837, 1033-1036; May-July 1868, *Globe*, pp. 2466, 3766; Jan. 1869, pp. 262-269.

have sought to serve myself at your expense or at the expense of the political opinions of which you are the representative, is false if not malicious. I have not done as much as I have desired to do for you and the country, but I have done what I could under the embarrassments which have surrounded me, and only regret that I could do no more. I want you to believe this, Mr. President, because in my contests with Distillers, Gold Speculators, Bank Note Companies, and plunderers of all descriptions, it is of the utmost importance that I should have the confidence of the President, to whom I, as Secretary of the Treasury, am primarily responsible for the manner in which I perform my official duties.”<sup>1</sup>

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<sup>1</sup> Aug. 19, 1867, Johnson Papers, MS., Library of Congress. McCulloch wrote to Johnson Sept. 20, 1867: “In regard to the National Banks I have only to say that such especial friends of yours as Gov. Swann, Gov. English, Mr. Hendricks, etc., etc., are as deeply interested in them as anybody else. I am not responsible for the system, but I deem it to be my duty as an officer of the Government to sustain it until a better system shall be adopted. . . . The statement that Mr. Chase is controlling or even influencing the action of your Secretary of the Treasury is all bosh.” F. P. Blair, Sen. wrote to the President Sept. 7, 1867 that a change was necessary in the Treasury by the appointment of “some living, active, energetic politician—a man not of Chase caste, not of the National Bank tribe.” A little before Oct. 23, 1867, Hendricks wrote to D. W. Voorhees: “I notice that it is again reported that Mr. McCulloch is to go out next month. I wish you would say to the President that I hope this is not to be the case. It will not strengthen him in the North West. I find it to be important that no change now takes place in the head of the Treasury.” Ibid.



## CHAPTER XXXVI

AMID the general acclamations of the people on March 4, 1869 General Grant was inaugurated President. No President since Washington, except Monroe and Lincoln at their second inaugurations, went into office so favourably regarded by men of all parties. As I have previously stated, he could have had the Democratic nomination had he not decided to cast his lot with the Republicans; and although the contest had been a lively one, Democratic zeal had in hardly any degree been directed against Grant but rather against Republican policy. Thus Democrats regarded him as their President as well as that of the party which chose him. His record as a general had won the admiration, and his simple and honest nature the affections, of the educated and highly placed as well as of the plain people. In the ceremony of inauguration there was but one jarring note. Grant felt so bitterly towards Johnson, because of their controversy of the year before, that he departed from the usual custom and declined to drive with him in the same carriage from the White House to the Capitol.<sup>1</sup>

His brief inaugural address was characteristic. "The responsibilities of the position I feel," he said, "but accept them without fear. The office has come to me unsought; I commence its duties untrammelled." He had a great opportunity; only Washington's and Lincoln's were greater. In his appointments for the cabinet he showed his complete independence, choosing his ministers without the usual consultations with

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<sup>1</sup> Blaine, vol. ii. p. 423; New York *Tribune*, March 5.

prominent men of the party and without regard to public sentiment and its canvassing of the merits of different candidates through the press. Hardly any newspaper guessing of the make-up of the cabinet was even in part correct and five of the appointments were a general surprise, some of them indeed to the men themselves who were named. Elihu B. Washburne of Illinois, the faithful friend of Lincoln and Grant, was nominated for Secretary of State. He had been an excellent representative in Congress but was entirely without fitness for the State Department. For Secretary of the Treasury the President's choice fell upon Alexander T. Stewart, the rich and successful dry goods merchant of New York City. Some senators and representatives did not like this selection but it was well received by the public. Stewart was one of the three richest men in the country and had built up his immense fortune from a small inheritance by remarkably able business management. For a number of years the newspapers had been full of anecdotes of his executive ability as shown in his systematization of a large trade and his excellent choice of subordinates; and few men outside of public life were better known. Grant, so it was said, had observed the skill with which Stewart conducted his private affairs and desired to enlist it in the public service. His nomination, along with all the others, was promptly and unanimously confirmed but within two days it was discovered that he was not eligible for the office. The Act of September 2, 1789 establishing the Department provided that no one appointed Secretary of the Treasury should "directly or indirectly be concerned or interested in carrying on the business of trade or commerce."<sup>1</sup> The President asked Congress to ex-

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<sup>1</sup> Stewart was willing to transfer his business during his term of office to trustees who should give all the profits to charity but there were serious differences of opinion as to whether this would fulfil the conditions of the law, *New York Tribune*, March 10.

empt Stewart by joint resolution from the operation of the act and Sherman asked unanimous consent of the Senate to introduce a bill repealing so much of the act as made Stewart ineligible, his intention being to have it passed at once; but Sumner objected to such a summary proceeding. The President withdrew his request, [March 9], and, "to fill a vacancy," appointed George S. Boutwell of Massachusetts, a sturdy Puritan and politician of sterling virtue but with no especial qualifications for Secretaryship of the Treasury. He had been governor of his Commonwealth, and later the first commissioner of Internal Revenue appointed [by Lincoln], and for the last six years had been a member of the House of Representatives. His was a political appointment. He was one of the strong men of his party in the House and belonged to the radical wing; he had at first declined the office and now accepted it unwillingly.<sup>1</sup>

Adolph E. Borie, whose only distinction was that of being a rich man of Philadelphia and a personal friend of Grant's, was named Secretary of the Navy. Only unbounded confidence in the President enabled the country to swallow this appointment.

Jacob D. Cox was made Secretary of the Interior. This was an excellent choice. Cox had served all through the Civil War with credit and at Antietam and Franklin with distinction. He had been governor of Ohio for two years and during the canvass came out in opposition to negro suffrage. "You assume," he wrote to his radical friends at Oberlin, "that the extension of the right of suffrage to the blacks, leaving them intermixed with the whites, will cure all the trouble. I believe it would rather be like the decision in that outer darkness of which Milton speaks where

'Chaos umpire sits,  
And by decision more embroils the fray.'"

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<sup>1</sup> Reminiscences, vol. ii. p. 166.

While governor he said in a private conversation that he had come to the conclusion "that so large bodies of black men and white as were in presence in the Southern States never could share political power and that the insistence upon it on the part of the colored people would lead to their ruin." Though essentially a man of affairs, Cox was a reader of books of history, biography and natural science. He was physically and mentally vigorous, a good talker and agreeable companion, scrupulously honest and truthful and a gentleman.

Another excellent appointment of Grant's was his Attorney-General, E. Rockwood Hoar, who was then a judge of the Supreme Judicial Court of Massachusetts. Hoar sprung from "the oldest and purest English New England stock." Impressing his Massachusetts companions as "a typical New Englander, essentially a Puritan," he seemed to one apart from that community a man of broad intelligence and sympathy. It was "a sense of humor and spirit of kindliness" that made him a citizen of the world and demonstrated to the guest at his home in Concord that "the noble frugality and quiet dignity" of his little town might cradle the widest views of life. In Washington during his term of office his manners were thought brusque but in Concord they were always marked by gentle considerateness. "Emerson loved him" and Lowell, in a private letter to Nordhoff, paid him this tribute: "You cannot set too high a value on the *character* of Judge Hoar.<sup>1</sup> The extraordinary quickness and acuteness, the *flash* of his mind (which I never saw matched but in Dr. Holmes) have dazzled and bewildered some people so that they were blind to his solid qualities. Moreover you know there are people who are *afraid* of wit and cannot see wisdom unless in that deliberate movement of thought whose every step they can accompany. I have known Mr. Hoar for more

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<sup>1</sup> So he was called distinctively.



than thirty years, intimately for nearly twenty, and it is the solidity of the man, his courage and his integrity that I value most highly.”<sup>1</sup> Cox, whose association with him in the Cabinet was the beginning of a life-long friendship, wrote that “a heartier accord with all that is right and true, a warmer sympathy with whatever makes for progress and tends to level men upward, was never seen.”<sup>2</sup>

John A. Rawlins, Grant's faithful friend and mentor in the Army, was appointed Secretary of War and John A. J. Creswell of Maryland Postmaster-General.

Washburne soon resigned the Secretaryship of State and then it became known that he had been nominated for the place as a passing compliment; appointed minister to France he was succeeded in the State Department by Hamilton Fish of New York. Fish, now sixty years old, had inherited wealth and high social rank, being a scion of one of the old Knickerbocker families. He had served in the legislature of his State, had been her governor and had represented her for one term each in the national House and the Senate [Senate 1851-1857]. In Washington, at his home in New York City and at his country seat on the Hudson he entertained much and well. His feeling in accepting the appointment is revealed in a friendly letter written to Sumner. “Very much against my own wishes and after a very positive refusal,” he said, “I am going to Washington to undertake duties for which I have little taste and less fitness. . . . My name was sent to the Senate without my knowledge. I had declined by telegraph to a letter tendering the place.” I go to Washington “with a heavy heart and with unnumbered misgivings and at the sacrifice of personal ease and com-

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<sup>1</sup> Dec. 15, 1869. Letters, vol. ii. p. 53.

<sup>2</sup> I have drawn this characterization largely from the tributes paid to Judge Hoar at the February, 1895 meeting of the Massachusetts Historical Society by Charles F. Adams, Chief Justice Field, J. D. Cox, and Henry Lee.

fort. . . . I make this sacrifice on the most earnest appeal 'not to allow another break' etc."<sup>1</sup>

Grant's independent essay at cabinet making had not been a complete success; nevertheless a cabinet which contained Fish, Cox and Hoar could not be accounted otherwise than strong.

Grant's words on the financial question in his inaugural address had a true ring: "To protect the national honor every dollar of Government indebtedness should be paid in gold unless otherwise stipulated in the contract." During the session of the Congress, which adjourned March 4, 1869, the Republicans had shown that they purposed living up to the declaration of their platform that the debt must be paid, "not only according to the letter but the spirit of the laws."<sup>2</sup> And now with a sympathetic President they were enabled to enact their will. On March 12 the bill "to strengthen the public credit" passed the House, four days later the Senate, and on March 18 it was approved by Grant, being the first law of his administration. "To settle conflicting questions and interpretations of the laws," are the words of the act, "it is hereby provided and declared that the faith of the United States is solemnly pledged to the payment in coin or its equivalent" of the United States notes [greenbacks] and of all the United States bonds, except in cases wherein the law authorizing their issue provided expressly for their payment in "other currency than gold and silver." "And the United States," so the Act terminated, "also solemnly pledges its faith to make provision at the earliest practicable period for the redemption of the United States notes in coin." The vote on the act in the House was 97:47 (not voting 49). All the ayes but one were

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<sup>1</sup> March 13, Pierce's Sumner, vol. iv. p. 379, from which and Blaine, vol. ii., this characterization is drawn.

<sup>2</sup> For the proceedings, see McPherson's Reconstruction, p. 395.

Republicans, only twelve Republicans voted no. In the Senate all the 42 ayes were Republicans; the noes were seven Republicans and six Democrats.<sup>1</sup> Thus was settled for all time in both the most honest and the most politic way the question of the payment of the principal of the 5-20 bonds in coin — a question which was raised by Pendleton's advocating their payment in greenbacks, a policy supported by Butler and Stevens<sup>2</sup> and in a certain measure by Sherman and Morton. Considering the state of public sentiment this act of the Republicans was a brave one. Many able lawyers believed that the right to pay the 5-20 bonds in greenbacks was indisputable. Sherman maintained with force that the law and the facts in regard to the fifty-two loan raised a reasonable doubt upon which honest men might disagree.<sup>3</sup> Morton's argument was powerful and designed to influence candid men who wished to carry out unfalteringly whatever contract had been made.<sup>4</sup> But as 600 millions of United States bonds were held in Europe,<sup>5</sup> the people must have public virtue and foresight in a high degree, who would regard such obligations as greater than was prescribed by the actual letter of the law, and accordingly resolve to tax themselves largely for the benefit of foreigners. Butler and Morton voted against the Public Credit Act but Sherman, after bowing awhile "to the popular storm" for "fiat money,"<sup>6</sup> braced up after the election and, as chairman of the Senate Finance committee, took charge of the bill.

Besides giving this pledge of the public faith, Congress at this short session [March 4–April 10, 1869] devoted some attention to "the offices." At the previous ses-

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<sup>1</sup> McPherson, p. 412.

<sup>2</sup> Their statements are not always consistent. Butler at times inclined to the Morton-Sherman idea.

<sup>3</sup> Speech of Feb. 27, 1868.

<sup>4</sup> See Life of Morton, Foulke, vol. ii. p. 70.

<sup>5</sup> Report of Secretary of the Treasury, Dec. 1, 1868.

<sup>6</sup> Remark of George F. Hoar, Autobiography, vol. ii. p. 22.

sion the House had repealed the Tenure-of-Office Act of March 2, 1867, but the Senate had not concurred in this action. Immediately after his inauguration Grant made it known to his party friends in Congress that he would not remove any Johnson office-holders for political reasons alone and appoint steadfast Republicans in their place. The House at once repealed the Act, but the Senate refused to take immediate action and referred the matter to the Judiciary committee which reported a bill suspending the act until the next session of Congress. This did not meet with favour and, after another consideration, the Judiciary committee reported a substitute for the existing law which passed the Senate but did not receive the assent of the House. The matter went to a committee of conference and finally a compromise, in the nature of a modification of the law, was agreed upon and passed by both Houses [approved April 5]. The successive attitudes of Congress were thus described by *The Nation*: Congress let Lincoln remove any one he pleased from office; it refused Johnson the same privilege; and now it gives Grant a tether.<sup>1</sup> Like the original act the House put one construction upon it, and the Senate another diametrically opposite. Although the President signed the bill, it gave him no satisfaction. In his first annual message [December 6, 1869] he recommended the "total repeal" of the "Tenure-of-Office Acts." Twice the House did its part towards carrying his will into effect but the Senate refused to concur. The law remained upon the statute-book during Grant's two administrations and until Grover Cleveland's first term, when through the efforts of Senator Hoar it was repealed [March 3, 1887].<sup>2</sup>

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<sup>1</sup> April 8, 1869, p. 268.

<sup>2</sup> *Globe*, Jan.-March 1869, pp. 282, 1412-1421, 1865; March-April 1869, pp. 40, 43-45, 205, 233, 248, 395, 402; Dec. 1870, p. 66; May 1872, p. 3410; Dec. 1886-March 1887, *Record*, 112, 248, 2700; Blaine, vol. ii.; Life of Morton, Foulke, vol. ii.; McPherson; Autobiography of George F. Hoar, vol. ii. p. 138.



During the short session, Grant and Congress attacked the problem of Reconstruction but the method of procedure was different from that which had obtained under Johnson. The Republicans still had a two-thirds majority in Congress<sup>1</sup> and they were in harmony with the President. Instead of strife between the two branches of the government there was now sympathetic co-operation. It will be remembered that Virginia and Mississippi were still unreconstructed and that, in both of their constitutions, were stringent disfranchising and test oath clauses. Virginia had not voted on her constitution and Mississippi had voted hers down. A split arose in the Republican party of both States, the Radicals insisting on the Constitutions as they had been adopted by the conventions, the Moderates proposing that the obnoxious sections should be submitted separately at a popular election. Pressure was brought to bear upon Grant and upon Congress by both factions, and with Grant the Moderates, who were supported by the Democrats, were successful. The words, "Let us have peace," of his letter accepting the Republican nomination and the considerate tone of his inaugural address foreshadowed that his first action would be in the line of conciliation. In a special message to Congress [April 7, 1869] he expressed his desire to restore Virginia and Mississippi "to their proper relations to the government" and recommended that in the submission of the constitutions "a separate vote be taken upon such parts as may be thought expedient."<sup>2</sup> Since the autumn of 1866 Congress had paid no heed to the recommendations of the President except to endeavour with irritable persistence to counteract any of their probable results but now it took action at once passing [April 9] a bill to carry out the wish uttered by the new President. The change was also shown in that the execution of the act was put in the hands of the Presi-

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<sup>1</sup> *Tribune Almanac*.

<sup>2</sup> McPherson, p. 417.

dent instead of the department commanders as had been the rule during Johnson's administration. Nay more, it was left entirely with him, whether or not the constitutions should be submitted and whether any parts of them should be submitted separately. Texas, which was also unreconstructed, was included in the act but in her case no necessity existed to provide for a separate submission of certain clauses. Congress exhibited in this law its constant tendency since it had begun reconstruction to tack on new conditions when opportunity offered, making it now more difficult for Virginia, Mississippi and Texas to get back into the Union than their sister Confederate States by requiring them to ratify the Fifteenth Amendment before they should be admitted to representation in Congress.<sup>1</sup> This was Morton's idea which he incorporated in an amendment to the original House bill but some of the moderate Republican senators objected to the imposition of this additional condition, Fessenden, Trumbull, Edmunds and Conkling among others voting against it, but they and the Democrats were overborne by a vote of 30 : 20.<sup>2</sup>

President Grant by proclamation fixed July 6, 1869 as the day for the election in Virginia and directed that the disfranchising and test oath clauses be voted on separately.<sup>3</sup> An active canvass took place under the party names of Conservatives and Radicals, the Democrats acting with the Conservatives who carried the day. The Constitution was adopted with little opposition but the disfranchising and test oath clauses were beaten by about 40,000 majority. Members of Congress and State officers were chosen at the same time, a conservative governor and majority of the legislature being elected. The election of the governor and legislature

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<sup>1</sup> McPherson, p. 408 ; Dunning, p. 231.

<sup>2</sup> *Globe*, pp. 653-656.

<sup>3</sup> Messages and Papers of the Presidents, Richardson, vol. vii. p. 13. This will be hereafter referred to as Richardson.

was due to the impression which had got abroad that Grant desired the success of the Conservatives but this Conkling maintained during the following January was a delusion.<sup>1</sup>

The President issued a like proclamation for Mississippi designating November 30, 1869 as the day of election.<sup>2</sup> The contest in this State was between the radical and conservative Republicans, the negroes acting with the Radicals and the Democrats for the most part with the Conservatives. Both parties were practically at one on the Constitution and the obnoxious clauses, but the contest on the governor and legislature started off fiercely. Seeking to ingratiate themselves with the President, the conservative Republicans put forward for governor his brother-in-law Judge Dent but, before the nomination was made, Grant, in order that there should be no misconception as to his position, wrote a letter to Dent, [August 1, 1869] which was soon made public, saying that he was thoroughly satisfied that the best interests of the State and country required the defeat of the Conservatives. Dent threw himself into the canvass with ardour and met his opponent, through his own challenge, in joint debate; but he was badly beaten in the election. The Radicals also gained control of the legislature by a large majority and elected all their candidates for Congress. Less than one thousand votes were cast against the Constitution and the obnoxious clauses were voted down emphatically.<sup>3</sup>

Texas with little opposition adopted her Constitution; the radical Republicans elected their governor.<sup>4</sup>

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<sup>1</sup> Appletons' Annual Cyclopædia, 1869, p. 711; Dunning, p. 233; *Globe*, Jan. 12, 1870, p. 383.

<sup>2</sup> Richardson, p. 16.

<sup>3</sup> For the Constitution 113,735, against it 955; for the disfranchising provision 2206, against 87,874; for the disqualifying provision 2390, against 87,253; for the test oath section 2170, against 88,444, Garner, p. 245. Garner is my main authority on Mississippi.

<sup>4</sup> Appletons' Annual Cyclopædia, 1869.

Leaving the question of Reconstruction for a while, I shall now proceed with an account of the New York Gold Conspiracy, of which the authors Jay Gould and James Fisk, Jr. so completely engrossed public attention that the Southern question and indeed all national and State affairs, save that of finance alone, were, for some time, left quite in the background. In July 1868 these two men obtained control of the Erie Railway and with one other associate became its "absolute irresponsible owners." "The board of directors held no meetings. The executive committee was never called together." The stockholders were not consulted nor their interests considered. Indeed the Erie Railway was the "personal property and plaything" of Fisk and Gould.<sup>1</sup> Gould was a remarkable money-getter; he was shrewd, subtle, untrustworthy, dishonest. His private life was correct, and he found pleasure in his home. Avarice and stock-gambling apart, he seemed to have no vices. Fisk, who had far less business ability than Gould, was equally unscrupulous and cared nothing for the truth nor for decency in living. "Coarse, noisy, boastful, ignorant, the type of a young butcher in appearance and mind, he was large, florid, gross, talkative and obstreperous" presenting a striking contrast to Gould who "was small and slight in person, dark, sallow, reticent and stealthy with a trace of Jewish origin."<sup>2</sup> Fisk was a wag and his funny sayings, spread abroad by the newspapers, were relished by the public because of their peculiarly American flavour. Business with him seemed to be a joke and he was the author of a startling innovation in railroad management. The Erie Railway offices had hitherto been in the lower part of the city, in a location convenient to their patrons and fitted up in the usual sober style. Gould and Fisk

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<sup>1</sup> Henry Adams, *The New York Gold Conspiracy*, in *Historical Essays*.

<sup>2</sup> Henry Adams.



bought a white marble palace on the corner of Eighth Avenue and 23d Street and a number of houses adjoining it, about two miles distant from the business quarter. The palace contained an opera house; and, in addition several sitting-rooms which they furnished in a vulgar style at a cost of about \$300,000 and occupied as the offices of the Erie Railway. In one of the adjoining houses Fisk had his private apartments whence a private passage led to his opera box. "The atmosphere of the Erie offices was not disturbed with moral prejudices," writes Henry Adams; "and as the opera [opera bouffe was mainly given] supplied Mr. Fisk's mind with amusement, so the opera *troupe* supplied him with a permanent harem." Gould and Fisk also had steamers of the "floating palace" order running from New York to Fall River, the summer trips of which were a gala affair. As one of these steamers was about to start, a large band played on the deck, and Fisk attired "in a blue uniform with a broad gilt cap-band, three silver stars on his coat sleeve, lavender kids and a diamond bosom-pin as large as a cherry,"<sup>1</sup> strutted up and down the pier with an air of command. He liked to be called Admiral and "surrounded by his aids, bestarred and bestriped like himself he smiled benignantly on the ever-increasing crowd."<sup>2</sup> For a number of years Fisk flaunted his vulgarity and immorality before the public gaze, mixing frolics with business in a way hitherto undreamt of. When business men, who had industries on the line of the Erie Railway, visited New York to demand a due consideration of their interests, to protest, it might be, against an arbitrary and ruinous advance of rates, they were taken to the Opera

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<sup>1</sup> Henry Adams; New York *World*, *Tribune*, June 16, 17, 1869, *Herald*, June 16; History of Steam Navigation, Preble, p. 262. In the cartoon of John T. Hoffman's cabinet, Nast assigned Fisk the place of Secretary of the Navy. Life of Nast, Paine, p. 183.

<sup>2</sup> New York *World*.

House by Fisk and forced to listen to his ribald jokes and witness his indecent behaviour.

While Fisk was living the life of a voluptuary and rake, Gould was ever revolving great schemes in his mind. His scheme for 1869 was to advance the price of gold on the theory that wheat would advance along with it to a price at which the farmers would part with their grain. "I had a careful examination made," he said, "and I found that with gold at 140 or 145 Americans would supply the English market with breadstuffs."<sup>1</sup> This implied a movement of the crops from the West to the seaboard and an abundance of freight for the Erie Railway. In his calculations to raise the price of gold there was one uncertain and most important factor, the United States government; for while the amount of gold in New York City and the country tributary to it was about 20 millions, the Treasury commonly held 75 to 100 millions,<sup>2</sup> the accumulation arising from the excess of receipts of custom-duties over the gold paid out for interest on the government bonds. Boutwell, who managed the Treasury Department with little interference from the President, had adopted the policy of selling a stated sum of gold each month ranging from two to eight millions, and purchasing bonds with the proceeds. As speculation was active on the Gold Board of New York, and as much legitimate business of importers of foreign goods and exporters of American produce depended upon the price of gold, the Secretary was careful to give, near the beginning of each month, public notice of his proposed sale for that month.

It was important for Gould that the President should approve his project of moving the crops, and with that end in view he proceeded to cultivate his acquaintance

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<sup>1</sup> Testimony, Gold Panic Investigation, Report No. 31, 41 Cong. 2d Sess., p. 132.

<sup>2</sup> H. Adams.

with A. R. Corbin who had married Grant's sister and resided in New York. Corbin was a speculator and had espoused Gould's theory and, when the President was in New York as his guest, he urged Gould to call upon his brother-in-law. This welcome request was at once complied with. On the afternoon of June 15 [1869] the President, as the guest of Fisk and Gould, embarked on the Fall River steamer on his way to Boston to attend the Peace Jubilee. At the nine o'clock supper, with Grant, Gould, Fisk and others at table, the talk was of business and ran on crop prospects and Boutwell's policy of selling gold. Gould argued that the government ought to let gold alone, allow it to find its commercial level and indeed, in the autumn, ought to facilitate an upward movement in it so that the crops might be readily moved. Fisk (probably) asked Grant his own view. The President replied that "he thought there was a certain amount of fictitiousness about the prosperity of the country and that the bubble might as well be tapped in one way as another." This was a "wet blanket" and Gould gave up for a time the idea of converting the President.<sup>1</sup> Still he and Fisk did not relinquish their social attentions. Fisk went to Boston with the Presidential party and, on their return to New York, took Grant to the Fifth Avenue theatre, of which he was part owner, to see Offenbach's "*La Périchole*." In a proscenium-box sat together the President, Mrs. Grant, their daughter, Gould, Fisk and Corbin.<sup>2</sup>

Toward the end of August, Gould formed a pool and began the purchase of gold but, although he bought a large amount, he was not able to advance the price materially as the natural tendency was downward. If his testimony may be believed, he had another interview about this time with the President [probably September 2] and was gratified to find that Grant had now become a

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<sup>1</sup> Testimony, pp. 152, 154.

<sup>2</sup> *New York Tribune*, June 19.

convert to his view of moving the crops. The President said: I am satisfied the country has a very bountiful harvest; there will be a large surplus of grain and unless we can find a market for it abroad, it will put down prices here. The government will do nothing during the fall months of the year to put down the price of gold or to make money tight. On the contrary we will do everything we can to facilitate the movement of breadstuffs.<sup>1</sup> From New York, Grant wrote a letter to Boutwell [received about September 4] in which he expressed the opinion that it was undesirable to force down the price of gold, lest the West should suffer and the movement of the crops be retarded. Boutwell telegraphed at once to Judge Richardson [his assistant at Washington], "Send no order to Butterfield [assistant-treasurer at New York] as to sales of gold until you hear from me."<sup>2</sup> Corbin knew that Grant had written to Boutwell and imparted this information to Gould together with a guess at the contents of the letter.

Gould bought gold largely. The lowest price on September 2 was 132; in two days it advanced five points. At the same time he aimed to enlist men of influence in the government on the bull side. He bought \$500,000 for Corbin at 132, \$1,000,000 at 133 $\frac{5}{8}$ . When it reached 137 Corbin expressed his desire to realize on the half million and Gould gave him his check for \$25,000.<sup>3</sup> He bought and carried \$1,500,000 for Butterfield<sup>4</sup> (Butterfield denied this) and lent him \$10,000 for a real estate operation.<sup>5</sup> He bought a half million for Horace Porter, private secretary to the President, but Porter at once repudiated the purchase.

Despite Gould's enormous purchases, gold did not

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<sup>1</sup> Ibid., p. 153.

<sup>2</sup> Boutwell's testimony, pp. 358, 359.

<sup>3</sup> Corbin's testimony, p. 255.

<sup>4</sup> The position of assistant-treasurer at New York is the most important one in the Department next to the Secretary of the Treasury.

<sup>5</sup> Butterfield's testimony, p. 318.



further advance ; he could not even maintain the price at 137. Feeling that the load was heavy, he induced Fisk to enter into the movement. At first Fisk hesitated saying that if "we put gold up the government will unload their gold on to us." No, Gould assured him, "that is all fixed. Corbin has got Butterfield all right and Corbin has got Grant fixed all right." Corbin told Fisk too that Mrs. Grant and Horace Porter were long of gold. Fisk was also assured that the Secretary of the Treasury had been forbidden to sell gold. As the President was at this time in New York [September 10-13] stopping at Corbin's, and Gould had seen him and moreover saw Corbin every morning and evening, all this seemed plausible and Fisk went into the speculation and bought largely.<sup>1</sup>

On September 13 the President went to a place in the hills of western Pennsylvania, twenty-eight miles distant from Pittsburg and the railroad and also a long way from the nearest telegraph station. Shortly afterwards, Boutwell came to New York and was given a dinner at the Union League Club, at which the hosts were men short of gold ; and, as it was well known by this time, that a clique headed by Gould and Fisk were endeavouring to corner gold, it was natural to suppose that the Secretary was pressed to interfere in the market : in fact it was generally believed that he would do so. During one of his daily visits to Corbin, Gould let his alarm appear and urged Corbin to write to the President arguing against the sale of any gold by the government. Corbin wrote such a letter [September 16 or 17] and had it sent by a special messenger. In the meantime under the influence of Fisk's purchases gold began to rise. On Monday September 20 it passed 137 and on Wednesday the 22, it stood at 140½.

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<sup>1</sup> Fisk's testimony, p. 173 ; Report, p. 7 ; H. Adams, p. 346 ; Gould's testimony.

On September 19 Grant received Corbin's letter. The tenor of it, together with its delivery by special messenger, disturbed him and he asked Mrs. Grant to write an imperative message to Mrs. Corbin, which she did saying, "Tell Mr. Corbin that the President is very much distressed by your speculations and you must close them as quick as you can."<sup>1</sup> This letter, which was received by Mrs. Corbin on Wednesday, September 22, greatly excited and distressed her and she insisted that her husband get out of his gold speculation. That night Gould called as usual and learned the news. Corbin then said: This thing must end. I must write to the President to-night that I have not a particle of interest direct or indirect in the speculation and what I write must be true. Gold is now 140 or 141. You pay me the full amount of the difference on my million at 141. If you will not do that, I will take three-fourths or one-half or a thousand dollars—it depends entirely upon you; I leave it wholly to your honor. Gould replied: I am much concerned. I interpret the letter to mean that the President is offended. But if I close this transaction as you suggest there may be a breakdown in the market, and will be if the government should interfere, and how can I afford to pay you? Gould seemed much oppressed as he went home that night. Next morning he came to Corbin's house and said, "I cannot give you anything if you will go out. But if you will remain in and take the chances of the market I will give you my check for \$100,000." It was a great temptation to Corbin, "a hundred thousand dollars on a rising market"; but having previously been warned by his wife, he resisted it and said, "Mr. Gould, my wife says No; Ulysses thinks it wrong and that it ought to end." Gould "with a look of severe distrust" replied, "Mr. Corbin, I am undone if that letter gets out." After

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<sup>1</sup> Corbin's testimony, p. 252.

standing for a while, looking exceedingly thoughtful, he left and went down to Wall Street.<sup>1</sup>

This was Thursday morning, September 23. Gould had about 50 millions of gold and, when he reached his broker's office in Broad Street, he gave orders to sell. "I purchased merely enough to make believe I was a bull," he said. But Fisk bought all day and gold closed at about 144. The excitement was intense. It was said that the clique held calls for a hundred millions. Immense losses, or even ruin, threatened many importers and produce merchants; disaster confronted every bear operator. The stock exchange was on the verge of a panic. "The whole mercantile community was hushed and half stupefied by a presentiment of the coming storm."<sup>2</sup> The pressure on the government to sell gold was great and, on this Thursday evening, the President, who had returned from Western Pennsylvania, and the Secretary of the Treasury were in earnest consultation at the White House and came to the determination to interfere should the excitement continue.

On Friday September 24 — the famous "Black Friday" when Wall Street was convulsed as it was never convulsed before<sup>3</sup> — Gould and Fisk went together to Broad Street and took possession of the private back office of a principal broker.<sup>4</sup> Smith, a partner of Gould in the brokerage house of Smith, Gould, Martin & Co., gave the order "Sell ten millions." Back came the report "I sold only eight millions." Still the command, Sell, sell, sell! do nothing but sell! only don't sell to Fisk's brokers.<sup>5</sup>

Speyers, a broker, tells of Fisk's operations. "Fisk," he said, "told me to buy all the gold I could get at 145 or under." While standing in the gold room and buying cautiously "until I passed my limit of 145, a slip

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<sup>1</sup> Corbin's testimony, p. 251 *et seq.*

<sup>3</sup> *Ibid.*

<sup>4</sup> H. Adams, p. 354.

<sup>2</sup> *The Nation*, Oct. 7, 1869, p. 285.

<sup>5</sup> *Ibid.*, p. 355.

of paper was handed to me on which was written, 'Put it to 150 at once' signed James Fisk, Jr. I continued to buy until I got it up to 150. I reported to Fisk and Gould showing both of them what I had done. Fisk said 'All right go back, and take all you can get at 150.' " The spacious Exchange room of the Gold Board was crowded as it had never been crowded during the wildest excitement of the war; and when the price reached 150 the bears were stricken with panic. They rushed eagerly to bid and buy; orders came in by telegraph to buy at any price. Great bankers and merchants from up-town and down-town were buyers.<sup>1</sup> Fisk in his shirt-sleeves and with a big cane in his hand, calling himself the Napoleon of Wall Street<sup>2</sup> and boasting that he would put gold to 200, ordered Speyers: "Go and bid gold up to 160. Take all you can get at 160. But you will be too late for I have given orders to other brokers already to buy at 160."<sup>3</sup> Speyers bought at various prices nearly 60 millions; and Belden, another broker of Fisk's, swears he has no means of knowing how much gold was bought in his name.<sup>4</sup>

Above the confused and hideous screaming of brokers came distinctly "160 for any part of five millions." No takers. Again the shrieking bid, "160 for five millions." No answer; "161 for five millions"; "162 for five millions." Still no answer. "162 for *any part* of five millions. And a quiet voice said, 'Sold one million at 162.'"<sup>5</sup> This broke the spell. Others sold. Word came that the Secretary of the Treasury had ordered a sale of gold. The price fell quickly from 162 to 135. "The gold we were then buying in Wall Street was phantom gold," said Fisk. I had a fear all the while "that this real gold would come out."<sup>6</sup>

<sup>1</sup> *The Nation*.

<sup>2</sup> H. Adams, p. 355.

<sup>3</sup> Speyers's testimony, p. 65.

<sup>4</sup> Report, p. 15.

<sup>5</sup> *The Nation*, Oct. 7, 1869, p. 286, <sup>6</sup> Testimony, p. 175.



The Secretary had been receiving frequent despatches. One from Butterfield said "Gold is 150: much feeling and accusations of government complicity." Somewhat after eleven o'clock, Boutwell had a consultation with Grant, the result of which was a decision to sell four millions. The Secretary's telegram giving this order reached New York a little after noon and was at once made public.

There was a raging crowd in Wall and Broad streets. It was of course supposed that Gould was all the time engaged with Fisk in the bull operation, and both men were in danger of mob violence; they fled up town and took refuge in their "castle of Erie"<sup>1</sup> where they were defended by armed "thugs"<sup>2</sup> whom they kept in their service. Gould's prompt selling had saved him. He was able to meet his contracts and protect his brokers but Fisk was obliged to repudiate his purchases. Some of his brokers failed as did also a number of others.<sup>3</sup> The unravelling of the relations between Gould and Fisk would be an interesting study. Seemingly Gould had "sold out" Fisk but they remained partners and the best of business and personal friends.<sup>4</sup>

The legitimate business of the country had been paralyzed. Importers of foreign goods and sellers of American produce had been at the mercy of the gold gamblers. The wild speculation on the Gold Board and in the Stock Exchange was followed by many defalcations. It was easy for the losers to believe that the President or some one of his family had been interested in the speculation, and for a while allegations to this effect had some currency. There is however absolutely no ground for the least suspicion of the complicity direct or indirect of the President or Mrs. Grant or Horace Porter. It was the President's indiscretion in accepting the hospitality

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<sup>1</sup> H. Adams, p. 357.

<sup>2</sup> H. Adams, pp. 356, 360, 364.

<sup>3</sup> Report, p. 7.

<sup>4</sup> See Fisk's remarkable testimony, p. 169.

of Gould and Fisk and the speculations of his foolish brother-in-law that caused tongues to wag. It was whispered that the Secretary of the Treasury was involved but, after the heat and passion of Black Friday were over, reflection upon his uncompromising actions and transparent demeanour showed how absurd was this suspicion.

Butterfield had acted improperly : dishonestly indeed, considering his position. Besides borrowing money from Jay Gould he had speculated in government bonds and gold although in September he was on the bear side of gold. Boutwell at the President's suggestion requested his resignation which was sent in on October 25.<sup>1</sup>

I purpose now to speak of the different views taken of financial matters by Grant's Secretary of the Treasury, the Supreme Court and Congress.

In his report of December 6, 1869 Boutwell stated the debt on December 1 as \$2,453,000,000, a decrease since March 1 of \$71,903,000. For the year ending June 30 the excess of receipts over expenditures was \$49,453,000; since March 4, 5-20 bonds to the amount of \$75,476,000 had been purchased.<sup>2</sup> The average premium on gold which the government had sold since March 1 was  $32\frac{8}{10}$  per cent., that on bonds purchased  $16\frac{98}{100}$  per cent., as reckoned in greenbacks. On a gold basis the 5-20 six per cent. bonds were worth a fraction over 88 cents on the dollar. To comply with the provision of the Act of February 25, 1862 that one per cent. of the entire debt should be set apart annually as a sinking fund Boutwell had placed in this fund twenty millions of bonds. The

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<sup>1</sup> My principal authorities for this account are Henry Adams's essay and the report and testimony of the Gold Panic Investigation known as the Garfield report. I have also consulted C. F. Adams Jr.'s Chapter of Erie ; *The Nation* ; Boutwell's Reminiscences, vol. ii. ; Appletons' Annual Cyclopædia, 1869 ; Henry Clews, Twenty-eight Years in Wall Street.

<sup>2</sup> Round numbers are used.

mainspring of Boutwell's policy was the reduction of the public debt: to accomplish this, let a large amount of money be collected from the people in taxes and let there be a rigid economy in expenditures. The Secretary also aimed to reduce the interest, and, believing that  $4\frac{1}{2}$  per cent. bonds might be sold, elaborated a plan in which such a feature was prominent. He desired the resumption of specie payments but he saw that, to maintain them, business prosperity and a balance of the foreign trade in our favour were requisite. Improved faith in the government by a constant redemption of the debt would be of material assistance; but there was an excessive issue of the greenbacks; and some contraction (a resort to the much criticised policy of McCulloch) would be necessary: he therefore asked for authority to retire at his discretion United States notes to the amount of two millions monthly. Boutwell's policy is regarded as the antipode of McCulloch's as he paid bonds which were not absolutely due in preference to paying the greenbacks which were due on demand. Yet, as Congress had stopped the policy of contraction and gave him no authority to take it up again, he made the best possible use of his surplus: the continued enormous reduction of the debt was a valuable asset at home and abroad. For a nation largely in debt it was a unique policy and it gratified our people to think that we were seemingly more prompt to pay than the nations of Europe.

The United States Supreme Court now interfered in finance in somewhat the same way as it had interfered in slavery at the time of the Dred Scott case. On February 7, 1870 a decision was handed down in the case of *Hepburn vs. Griswold*, Chief Justice Chase delivering the opinion of the Court. The Legal-Tender Act, he argued, impaired the obligation of contracts and was inconsistent with the spirit of the Constitution. Moreover, in forcing creditors to accept dollars of a less

value than those which they had lent or by the terms of the contract had a right to expect in the payment of claims, it deprived persons of property without due process of law. "We are obliged to conclude," he said, "that an act making mere promises to pay dollars a legal tender in payment of debts previously contracted is not a means appropriate, plainly adapted, really calculated to carry into effect any express power vested in Congress; that such an act is inconsistent with the spirit of the Constitution; and that it is prohibited by the Constitution." Chase then went on to explain how, as Chief Justice, he had come to differ from the opinion he had held as Secretary of the Treasury. "It is not surprising," he said, "that amid the tumult of the late Civil War, and under the influence of apprehensions for the safety of the republic almost universal, different views never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive authority. If power was assumed from patriotic motives, the assumption found ready justification in patriotic hearts. Many who doubted yielded their doubts, many who did not doubt were silent. Some who were strongly averse to making government notes a legal tender felt themselves constrained to acquiesce in the views of the advocates of the measure. Not a few who then insisted upon its necessity, or acquiesced in that view, have, since the return of peace and under the influence of the calmer time, reconsidered their conclusions, and now concur in those which we have just announced. These conclusions seem to us to be fully sanctioned by the letter and spirit of the Constitution."<sup>1</sup>

Justice Samuel F. Miller delivered the dissenting

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<sup>1</sup> 8 Wall. 625. For Chase's action at the time the Legal-Tender Act was passed, see vol. iii. p. 564.



opinion in the case. He supported his argument by the authority of Chief Justice Marshall whom in many respects he resembled, being as strong a Republican as Marshall was Federalist, though inferior to the great Virginian in judicial ability. "I have cited at unusual length these remarks of Chief Justice Marshall," Miller said, "because, though made half a century ago, their applicability to the circumstances under which Congress called to its aid the power of making the securities of the government a legal tender, as a means of successfully prosecuting a war which without such aid seemed likely to terminate its existence, and to borrow money which could in no other manner be borrowed, and to pay the debt of millions due to its soldiers in the field, which could by no other means be paid, seems to be almost prophetic. If he had had clearly before his mind the future history of his country he could not have better characterized a principle which would in this very case have rendered the power to carry on war nugatory, which would have deprived Congress of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances by the use of the most appropriate means of supporting the government in the crisis of its fate." "With the credit of the government nearly exhausted," Miller continued, "and the resources of taxation inadequate to pay even the interest on the public debt, Congress was called on to devise some new means of borrowing money on the credit of the nation; for the result of the war was conceded by all thoughtful men to depend on the capacity of the government to raise money in amounts previously unknown. The banks had already loaned their means to the Treasury. They had been compelled to suspend the payment of specie on their own notes. The coin in the country if it could all have been placed within the control of the Secretary of the Treasury would not have made a circulation sufficient to answer army purchases

and army payments to say nothing of the ordinary business of the country. A general collapse of credit, of payment, and of business seemed inevitable, in which faith in the ability of the government would have been destroyed, the rebellion would have triumphed, the States would have been left divided, and the people impoverished. The National government would have perished and with it the Constitution which we are now called upon to construe with such nice and critical accuracy. That the Legal-Tender Act prevented these disastrous results, and that the tender clause was necessary to prevent them I entertain no doubt. It furnished instantly a means of paying the soldiers in the field and filled the coffers of the commissary and quartermaster. It furnished a medium for the payment of private debts, as well as public, at a time when gold was being rapidly withdrawn from circulation and the State bank currency was becoming worthless. It furnished the means to the capitalist of buying the bonds of the government. It stimulated trade, revived the drooping energies of the country and restored confidence to the public mind. The results which followed the adoption of this measure are beyond dispute. No other adequate cause has ever been assigned for the revival of government credit, the renewed activity of trade, and the facility with which the government borrowed in two or three years, at reasonable rates of interest, mainly from its own citizens, double the amount of money there was in the country including coin, bank notes, and the notes issued under the Legal-Tender Acts." "But it is said that the law is in conflict with the spirit if not the letter of several provisions of the Constitution. Undoubtedly it is a law impairing the obligation of contracts made before its passage. But while the Constitution forbids the States to pass such laws it does not forbid Congress. . . . Upon the enactment of these legal-tender laws they were received with almost

universal acquiescence as valid. Payments were made in the legal-tender notes for debts in existence when the law was passed to the amount of thousands of millions of dollars, though gold was the only lawful tender when the debts were contracted. A great if not larger amount is now due under contracts made since their passage, under the belief that these legal tenders would be valid payment. The two houses of Congress, the President who signed the bill, and fifteen State courts, being all but one that has passed upon the question, have expressed their belief in the constitutionality of these laws. With all this great weight of authority, this strong concurrence of opinion among those who have passed upon the question, before we have been called to decide it, whose duty it was as much as it is ours to pass upon it in the light of the Constitution, are we to reverse their action, to disturb contracts, to declare the law void because the necessity for its enactment does not appear so strong to us as it did to Congress, or so clear as it was to other courts? . . . As I have a very decided opinion that Congress acted within the scope of its authority, I must hold the law to be constitutional, and dissent from the opinion of the court.”<sup>1</sup>

When the determination of the Court was arrived at on November 27, 1869 four justices concurred with Chase; Nelson, Clifford, Grier and Field, but before the opinion was read Grier resigned. Swayne and Davis agreed with Miller. The decision could be stated as five or four to three according to one's individual preference, but as matter of history, the concurrence of Grier carries no weight whatever. When the first vote on the *Hepburn vs. Griswold* case was taken in conference, the Court stood 4 : 4, Grier pronouncing in favour of the constitutionality of the Legal-Tender Act; but

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<sup>1</sup> 8 Wall. pp. 631, 634, 635, 637-639.

before the conference closed he, in another case, stated an opinion inconsistent with that vote. This inconsistency being called to his attention, he changed his vote and went over to the side of Chase, Nelson, Clifford and Field. Within a week from that day, every judge on the bench authorized a committee of their number to say to Grier "that it was their unanimous opinion that he ought to resign."<sup>1</sup>

The belief of Republicans, who had stood by the government during the war and who now supported Grant, was accurately and forcibly stated by Miller. Miller was an intense and overbearing partisan and, on the many questions which had come before the Court since the close of the war, had been on the radical Republican side as opposed to the conservative leaning of the majority of his associates. He gave his judicial approval to what had been done by President Lincoln and Congress and, had a pronouncement been made on the Reconstruction Acts, he would undoubtedly have found them warranted by the Constitution. He was nevertheless an excellent judge and it is not surprising that the Republicans thought his, better law than Chase's. Between two such judicial giants the layman must needs hesitate had not the true doctrine been stated earlier by Webster, next to Marshall the greatest expounder of the Constitution. "What is meant by the 'constitutional currency,'" he asked? "Currency in a large and perhaps a just sense includes not only gold and silver and bank notes but bills of exchange also. . . . But if we understand by currency the *legal money* of the country and that which constitutes a lawful tender for debts and is the statute measure of value, then undoubtedly nothing is included but gold and

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<sup>1</sup> Statement April 30, 1870 of Swayne, Miller, Davis, Strong, Bradley, a paper written by Miller. Joseph P. Bradley, *Miscellaneous Writings*, p. 73. Grier resigned in Dec. 1869 to take effect on Feb. 1, 1870. He sat Jan. 31, 1870 for the last time on the bench.



silver. Most unquestionably there is no legal tender and there can be no legal tender in this country under the authority of this government or any other, but gold and silver either the coinage of our own mints or foreign coins at rates regulated by Congress. This is a constitutional principle, perfectly plain and of the very highest importance. The States are expressly prohibited from making anything but gold and silver a tender in payment of debts and although no such express prohibition is applied to Congress, yet, as Congress has no power granted to it, in this respect but to coin money and regulate the value of foreign coins, it clearly has no power to substitute paper or anything else, for coin as a tender in payment of debts and in discharge of contracts. . . . The legal tender, therefore, the constitutional standard of value, is established and cannot be overthrown. To overthrow it would shake the whole system.”<sup>1</sup>

The country would have been saved great expense and trouble if the Congress of 1862 had been governed by this construction of the Constitution, a fair one as it was and enforced by sound economic doctrine. There are, wrote Francis A. Walker and Henry Adams, “but two means by which governments can obtain money. One of these is, to take. The other is, to borrow.”<sup>2</sup> When the greenbacks were made a legal tender the first method was used; and the forced loan was peculiarly iniquitous, inasmuch as the government not only cheated its own creditors but enabled every debtor in the land to do likewise. “To borrow” is to make a bargain with the men who have the money and in the long run is the cheaper as well as the more honest method. It was a pity then that the decision of the

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<sup>1</sup> Speech in the Senate, Dec. 21, 1836, against the specie circular, advocating a return to a system of redeemable bank notes, Works, old ed., vol. iv. p. 270.

<sup>2</sup> Adams, Hist. Essays, p. 296.

Court as delivered by Chase was not allowed to stand.<sup>1</sup> Under it all debts contracted before February 25, 1862 would have to be paid in coin; the injustice of the Legal-Tender Act were then partly obviated without great harm to the community. The amount of obligations affected by it was not large. Most of the State, municipal and railroad bonds issued before 1862 had been paid off or converted.<sup>2</sup> Taken in connection with another decision of the Court recognizing as legal all contracts specifying specie<sup>3</sup> it would have been a help to the resumption of specie payments.

Various considerations contributed to the overthrow of this decision of the Court. It was regarded as an attack on sound Republican doctrine made by five judges with Democratic affiliations while two Republican justices and one Independent<sup>4</sup> had sturdily defended the faith. Senators and representatives denounced it as being as infamous as the Dred Scott decision.<sup>5</sup> The influence of the Pennsylvania Railroad and other large corporations, which had outstanding bonds of issues prior to 1862, was used against it. The day, on which Chase read his opinion, saw gold quoted at from  $121\frac{1}{8}$  to  $120\frac{1}{2}$  and, as railroad managers are quite as prone as anybody else to allow a present specific ill to obscure a future general good, they protested against the injustice of being obliged to pay the interest and principal of their bonds in coin, when their passenger fares and freight money was received in the paper currency of the country.<sup>6</sup> But it was no real injustice. They had received coin for their bonds at the time of their sale and they had before them the

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<sup>1</sup> I hope that I appreciate fully the force of Miller's reasoning which appealed to many wise and patriotic men of the time but I think I have answered his argument in my vol. iii. p. 565.

<sup>2</sup> *The Nation*, April 14, 1870, p. 231.

<sup>3</sup> Hart's Chase, p. 394. *Bronson vs. Rodes*, 7 Wall. 229. See also *Cheang-Kee vs. U. S.* 3 Wall. 320.

<sup>4</sup> Davis.

<sup>5</sup> *The Nation*, March 24, 1870, p. 188.

<sup>6</sup> *Appletons' Annual Cyclopædia*, 1870, p. 296; *Hart's Chase*, p. 397.

example of their country, which although receiving greenbacks from the sale of their 5-20 bonds had solemnly pledged its faith to redeem them in coin. And such hardship as they suffered, was more apparent than real. Gold steadily declined during 1870 and 1871, touching 110 in November 1870 and 108 $\frac{3}{8}$  in December 1871. Had the country acquiesced in the decision of the Court and had Congress supplemented it by legislation permitting the Secretary of the Treasury gradually to contract the greenbacks, specie payments might have been reached by 1873 and the financial panic of that year postponed.

Chase's open craving for the presidency detracted from the weight of his opinion. In the spring of 1869, the Chief Justice and George F. Hoar walked home together from a meeting of a scientific club in Washington. For the whole distance, about a mile, Chase talked of the next nomination for the presidency, the prospects of various candidates and the probable chances of a Democratic candidate who should appeal to Republicans disaffected with the present policies of their party. Somewhat later, during a half hour's drive across Baltimore he talked incessantly in the same strain to a stranger. He had the presidency "on the brain," wrote Hoar.<sup>1</sup> His conversation, his solicitations became a scandal and must have led his associates in the consultation room to look upon him with suspicion. The public regarded Chase's opinion as another bid for the presidency, failing to perceive the inconsistency of such an explanation. Chase indeed was trying for the Democratic nomination but most Democrats still favoured the payment of the 5-20 bonds in greenbacks<sup>2</sup> which would be an impossible policy if these were to be deprived of their legal tender character. The opinion read by the Chief Justice was undoubtedly

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<sup>1</sup> Autobiography, vol. 1. p. 282.

<sup>2</sup> *The Nation*, Feb. 3, 1870, p. 65.

the expression of an honest conviction given without a thought of the effect it might have on his presidential prospects. But the general public was incapable of taking so large and generous a view ; they could have no great respect for a Chief Justice whose notorious striving for the presidency had degraded his office. And the poor esteem, in which he was held, undoubtedly figured in the final result which, anticipating the chronological order of events, I shall now relate.

Chase was prepared to go to the length of declaring the Legal-Tender Act not only unconstitutional for contracts made prior to February 25, 1862 but for all contracts. The Republican party and the business interests of the country viewed such a contingency with great, although (I think) unnecessary, alarm. It is doubtful too whether Chase could have carried a majority of the Court with him. It was understood that he had the concurrence of Nelson and Clifford, but not of Grier [appointments of Democratic presidents preceding Lincoln] nor of Field [an appointment of Lincoln's] who held the legal tender clause unconstitutional for prior contracts only.<sup>1</sup> This conjecture was never tested, for an important change was now made in the political constitution of the Supreme Court.

By an act passed during Johnson's administration<sup>2</sup> the number of judges was reduced from nine to seven as soon as that number should be reached in the course of retirement or death of actual incumbents. Soon after Grant's inauguration the number was restored to nine by statute of April 10, 1869 to take effect on the first Monday of December. Under this act, through the death of Wayne and the resignation of Grier, there were two va-

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<sup>1</sup> Hart's Chase, p. 396 ; McPherson's Reconstruction, p. 523, note.

<sup>2</sup> July 23, 1866 approved by Johnson. The Act of March 3, 1863 had created a tenth justice and Field was appointed. Catron died in May 1865 and it was to fill his seat that Johnson nominated Stanbery in April 1866. The matter was put off and then the law of July 23, 1866 was passed.



cancies to fill and for these places Grant nominated E. R. Hoar [December 14, 1869] and Edwin M. Stanton [December 20, 1869]. Stanton was at once confirmed but died four days later and Hoar was rejected by the Senate [February 3, 1870]. Two vacancies, then, existed when the decision on the Legal-Tender Act was handed down and on that same day [February 7, 1870] the President nominated William Strong of Pennsylvania and Joseph P. Bradley of New Jersey. Soon after these two judges took their seats, Attorney-General E. R. Hoar, who, since the summer of 1864 when Chase had spoken contemptuously of Lincoln,<sup>1</sup> had disliked and distrusted Chase and who believed that it would be a calamity unsettling to business to divest the greenbacks of their legal tender character, moved [March 25, 1870] that two cases formally passed over, involving the legal tender question, be taken up and argued. This the Court by five [Miller, Davis, Swayne, Strong and Bradley] to four decided to do but the counsel withdrew the appeal of the appellants and these cases were no longer before the Court.<sup>2</sup> Later however, two others, the so-called Legal Tender cases, were brought before the Court, and a decision was reached and announced on May 1, 1871 but the opinions were not read until January 15, 1872. Strong gave the opinion of the Court saying, "We hold the acts of Congress constitutional as applied to contracts made either before or after their passage. In so holding we overrule so much of what was decided in *Hepburn vs. Griswold* as ruled the acts unwarranted by the Constitution so far as they apply to contracts made before their enactment."<sup>3</sup> Bradley in a separate concurring opinion began with a cogent legal argument and then lapsed into a bit of judicial oratory in which there was

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<sup>1</sup> See my vol. iv. p. 527, note 3.

<sup>2</sup> Latham's and Deming's Appeals, 9 Wall. 145.

<sup>3</sup> 12 Wall. 553.

little economic sense. "When we find them [the framers]," he said, "establishing the present government, . . . giving to it, among other things, the sole control of the money of the country and expressly prohibiting the *States* from issuing bills of credit and from making anything but gold and silver a legal tender and imposing no such restriction upon the General government, how can we resist the conclusion that they intended to leave to it that power unimpaired in case the future exigencies of the nation should require its exercise? . . . Can the poor man's cattle and horses and corn be thus taken by the government when the public exigency requires it, and cannot the rich man's bonds and notes be in like manner taken to reach the same end?"<sup>1</sup> Chase, Nelson, Clifford and Field dissented from the decision of the Court. The feeling of the Republican justices toward Chase was distinctly bitter. When it was first proposed to reopen the question, the Chief Justice and Miller came near having a wrangle while sitting on the bench;<sup>2</sup> and Strong when delivering his opinion could not refrain from this taunt, "Even the head of the Treasury represented to Congress [in 1862] the necessity of making the new issues legal tenders, or rather declared it impossible to avoid the necessity."<sup>3</sup> To this Chase in his dissenting opinion replied with dignity: "Examination and reflection under more propitious circumstances have satisfied him that this opinion was erroneous and he does not hesitate to declare it. He would do so just as unhesitatingly if his favor to the legal tender clause had been at that time decided, and his opinion as to the constitutionality of the measure clear."<sup>4</sup>

This decision of January 15, 1872, together with a subsequent decision of the Supreme Court, in which the opinion was delivered by Justice Gray, have settled

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<sup>1</sup> 12 Wall. 559-561.

<sup>2</sup> Hart's Chase, p. 403.

<sup>3</sup> 12 Wall. 542.

<sup>4</sup> *Ibid.*, 576.

the question. The United States notes were adjudged legal tender on contracts made before and since the Act of February 25, 1862.<sup>1</sup> It was, in my judgment, an unfortunate settlement which may in the future lead to financial disaster.

Chase by indirection expressed the belief that the Supreme Court had been packed in order to reverse the decision of which he was the mouthpiece;<sup>2</sup> and this charge has often reappeared despite the emphatic denials. It involves besides the President, the Attorney-General, E. R. Hoar, who was Grant's most trusted adviser in regard to judicial appointments and had generally the satisfaction of seeing such recommendations followed. Next to the President he had a larger part than any one else in the appointments of Strong and Bradley. Any one who knew Judge Hoar<sup>3</sup> might feel absolutely sure that he would have nothing to do directly or indirectly with packing a court to secure a wished-for decision; his regard for the dignity of the bench and honesty at the bar would make any such course on his part simply unthinkable. With those who did not enjoy a personal acquaintance with him, the systematic and careful refutation of the charge by George F. Hoar in 1896 ought to put upon it a quietus.<sup>4</sup> The appointment of Strong had long been favourably considered and with that of Bradley had been definitely determined on during the week preceding the announcement of the decision of the Supreme

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<sup>1</sup> The case was *Juilliard vs. Greenman*, decided on March 3, 1884. The Court stood 8 : 1, Field only dissenting, and went further than in 1872, holding that Congress has the power to make Treasury notes legal tender whether in peace or war; and that the question whether an exigency had arisen, calling for the exercise of that power, was a political one to be determined by Congress. Only two justices who had heard the *Hepburn vs. Griswold* case were still on the bench, Miller and Field.

<sup>2</sup> Schuckers, chap. xviii.

<sup>3</sup> Always so spoken of in Concord and Boston.

<sup>4</sup> Letter to Boston *Herald*, printed afterwards in a pamphlet to which my references are made.

Court adverse to the constitutionality of the Legal-Tender Act. The nominations were prepared and sent to the Senate on this Monday, February 7, 1870 before the decision of the Court was announced and Chase's opinion read. The charge at once falls to the ground unless the President and the Attorney-General knew the decision before it was announced in open Court; to sustain the charge, it is alleged that they did know it. The determination, or "sempre" as the judges call it, (arrived at in this case on November 27, 1869) is in the highest degree secret and confidential. A judge who should give an inkling of it would be unworthy of his place. George F. Hoar, a good lawyer with an extensive practice, writing after twenty-seven years of public life, had never heard of but two cases in which there had been a suspicion of such a disclosure.<sup>1</sup> As to the legal tender decision there is absolutely no evidence that it leaked out. The whole charge is, as J. D. Cox wrote, "an unwarranted conclusion from a mere coincidence." Nearly all the evidence, indeed, is the other way. A careful examination of the newspapers between November 27, 1869 and February 7, 1870 shows that their alert Washington correspondents failed to get hold of anything enabling them to make a correct report or even a clever surmise.<sup>2</sup> Boutwell and Cox, members of Grant's cabinet, remember perfectly well that the character and fitness of Strong and Bradley were discussed at cabinet meetings though no word was said about their opinions on the legal tender question or any other question likely to come before the Supreme Court.<sup>3</sup> Cox was especially positive in his recollection because of his own attitude of mind, as he believed Chase's opinion "the better one in law, and a sounder one in statesmanship, as well as the solidier barrier against all forms of fictitious or 'fiat'

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<sup>1</sup> Pamphlet, p. 9 *et seq.* One of the cases was the Dred Scott. See vol. ii

<sup>2</sup> Pamphlet, p. 18 *et seq.*

<sup>3</sup> *Ibid.*, p. 25.



money." Finally, Judge Hoar asserts that "neither the President nor myself knew what the decision was going to be. The Judges of the Supreme Court kept their own opinions, and, until they were read, nobody knew what they were." Indeed until the decision was publicly announced, he had thought that Chase would affirm the constitutionality of the Legal-Tender Act.<sup>1</sup>

Strong and Bradley were selected for their high character and eminent fitness. It was known indeed that Strong as judge of the Supreme Court of Pennsylvania had given an opinion in favour of the constitutionality of the Legal-Tender law but this had nothing to do with his selection. Most Republican lawyers thought likewise. The highest courts of New York, California, Indiana, Iowa, Pennsylvania, Massachusetts and the District of Columbia had upheld the constitutionality of the act;<sup>2</sup> and, as no one assumed that Grant would select other than Republicans, the chances were decidedly for the appointment of men who would follow Miller instead of Chase.<sup>3</sup> Curiously enough, had the question been at all considered, there might have been some doubt of Bradley's opinion which would have been emphasized had his independence of character been then known. He had advised the Camden and Amboy Railroad Company<sup>4</sup> of New Jersey, for which he was counsel, to pay their old debts in coin;<sup>5</sup> and that circumstance might well have given rise to the idea that he would

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<sup>1</sup> Hoar pamphlet, pp. 29, 34. See Judge Hoar's letter to *The Nation*, April 18, 1872, p. 256, called out by the editorial remark of *The Nation* the week previous denying that the court had been packed, p. 234.

<sup>2</sup> Hoar pamphlet, pp. 35, 39.

<sup>3</sup> The Kentucky Court of Appeals denied the constitutionality of the act in the very case of *Hepburn vs. Griswold*, which I have been considering. The high Court of New Jersey decided likewise, but not until after the first decision of the United States Supreme Court. Carson, Supreme Court.

<sup>4</sup> From many indirect statements of my authorities I have assumed that it was the Camden and Amboy Railroad to which Bradley gave the advice. He was one of its directors at the time of his appointment as Justice.

<sup>5</sup> Hoar pamphlet, p. 16; Judge Hoar's letter to *The Nation*, *l.c.*

hold the Legal-Tender Act unconstitutional for prior contracts. Disappointing as was the reversal of the Supreme Court decision, Strong's and Bradley's careers on the bench amply justified their appointment and Bradley must be classed among the great men who have sat in our highest Court.<sup>1</sup>

The financial legislation of the second session of the Forty-first Congress [December 6, 1869–July 15, 1870] was important. The act of July 12, 1870 provided for an increase of 54 millions of national bank notes above the 300 millions already authorized. Comprised in this act was an attempt, which proved unsuccessful, to give more currency to the West and South, where rates of interest were high, and to prevent the accumulation of money in New York City where rates were low on call for speculative purposes.

In line with the recommendation of the Secretary of the Treasury a bill, for the refunding of the national debt, received the careful consideration of the Finance Committee of the Senate and the Committee of Ways and Means of the House and was the occasion of an intelligent debate in the Senate.<sup>2</sup> On July 14, 1870 it became a law. It gave the Secretary of the Treasury authority to issue 200 million 5 per cent. bonds, 300 million  $4\frac{1}{2}$  per cents, and 1000 million 4 per cents, payable at the pleasure of the United States within ten, fifteen and thirty years respectively from the date of their issue. The principal and interest of these bonds

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<sup>1</sup> In my general account I have been much assisted by Hart's Chase and Henry Adams's essay, *The Session, 1869–1870*. See also G. F. Hoar's *Autobiography*, vol. i. p. 286; Schuckers's Chase, chap. xxviii.; Paper of Swayne, Miller, Davis, Strong, and Bradley. Joseph P. Bradley, *Miscellaneous Writings*, p. 61.

<sup>2</sup> On February 28, 1870 Sherman, who had charge of the bill, opened the regular debate which continued on March 1–3, 7–11. Sherman made two long speeches, besides his occasional remarks. Sumner, Morrill (Vt.) and Bayard, among others, made set speeches. Conkling, Morton, Thurman, Chandler and others took part in the debate.

should be paid in coin. They were to be sold at not less than par in coin or to be exchangeable for the 5-20 bonds, dollar for dollar. The coin received from the sale of these bonds was to be used in the redemption of the five-twenty's. The purchases of bonds by Boutwell were made when they were worth less than coin; now they were approaching a parity and, when they reached it, the bonds would of course be redeemed instead of purchased.

It was obvious that a large portion of the new bonds authorized by this act must be sold in Europe. The outbreak of the war between Germany and France immediately after the passage of the Refunding Act destroyed for a while the hope of their negotiation abroad; and indeed, in 1871, after the war was over, European bankers showed no desire for our five per cent. bonds payable in coin which could then be bought at par. Boutwell opened a public subscription in the United States. The National Banks subscribed for 64 millions and the general public two millions. Jay Cooke & Co. then undertook the sale of the remaining 134 millions of the five per cents<sup>1</sup> and, disposing of them largely if not wholly in Europe, carried Boutwell's negotiation to a successful issue. In his report for December 1872 he said, "Since my last annual report the business of negotiating two hundred millions of five per cent. bonds and the redemption of two hundred millions of six per cent. five-twenty bonds has been completed."

From March 1, 1869 to March 1, 1873 the reduction of the public debt was 368 millions, of the annual interest almost 25 millions. While these splendid results were due in the main to the energy of the American people and the country's natural resources, Boutwell guided with a sure hand and properly took to himself some of

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<sup>1</sup> Round numbers are used.

the credit.<sup>1</sup> In 1873 he was elected senator from Massachusetts and on March 17 resigned his position of Secretary of the Treasury.

In 1870 there was a decided demand on the part of western Republicans for a revision of the tariff in the direction of lower duties and among those who represented this opinion were William B. Allison of Iowa and James A. Garfield of Ohio, next to Blaine, the Speaker, the most important men, probably, in the House. Blaine had a proper appreciation of his two associates. It is related that, as he was walking with a friend one day through the Rotunda of the Capitol, he said: "The death of Thaddeus Stevens is an emancipation for the Republican party. He kept the party under his heel." "Whom have you got for leaders left?" his friend asked. "There are three young men coming forward," Blaine replied. "There," pointing to Allison who was approaching, "is a young man who will be heard from yet. James A. Garfield is another." He paused; after waiting a few moments his friend inquired, "Well, who is the third?" Blaine looked straight up into the dome, and said, "I don't see the third."<sup>2</sup>

Strong as was the demand, and logical the arguments, for a reduction of the tariff and able as was the leadership of the movement, the desired legislation could not be secured. The antagonism of the protected interests was too powerful. Greeley through his journal, the *New York Tribune*, exercised a potent influence and his view was thus expressed in a conversation with Garfield: "If I had my way, if I were king of this country, I would put a duty of \$100 a ton on pig iron, and a pro-

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<sup>1</sup> My authorities are the reports of the Secretary of the Treasury; Boutwell's *Reminiscences*, vol. ii.; *Recollections of John Sherman*, vol. ii.; *Appletons' Annual Cyclopædia*, 1870, 1871, 1872; Dewey, *Financial History*; *Monthly Report of Commerce and Navigation* for 1873, p. 303.

<sup>2</sup> George F. Hoar, *Autobiography*, vol. i. p. 239.



portionate duty on everything else that can be produced in America. The result would be that our people would be obliged to supply their own wants, manufactures would spring up, competition would finally reduce prices and we should live wholly within ourselves.”<sup>1</sup> William D. Kelley of Pennsylvania was the exponent of this view in the House of Representatives; he merited the name “Pig Iron Kelley,” with which he was dubbed, and he had a large following of practical men. Another representative from Pennsylvania, Daniel J. Morrell, the very capable general manager of the Cambria Iron Works, stood admiringly at his back and furnished him with facts, which he wove into his arguments for an essentially prohibitory tariff. When Garfield prepares a speech, Morrell said, he goes into the Library of Congress and gets his facts and reasoning out of books, while Kelley gets his from the lips of practical living men. Morrell furnished a contribution to the Greeley-Kelley argument by stating that at their iron works in Johnstown their people were a self-sufficing community. They raised their grain and ground it into flour and meal; they manufactured their woollen and cotton clothing and their shoes. He boasted in conversation on the floor of the House that everything he wore that day, except his silk hat, had been made in Johnstown.<sup>2</sup>

It was a favourite charge of the protectionists that some of the members of Congress who advocated lower duties were bribed with “British gold.” At one time it was declared that the nefarious work was done by the Cobden Club; and when it was shown that the Cobden Club was purely an educational society, formed for the purpose of winning men to the doctrine of free trade by discussion, speeches, pamphlets and articles in the press, it was asserted that the money was

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<sup>1</sup> Dewey, Financial History, p. 397; Garfield’s speech of June 4, 1878, Cong. Record Appendix, 45th Cong. 2d Sess., p. 293.

<sup>2</sup> Private conversation with Morrell.

furnished by English manufacturers. So far as I know, this assertion had not so much as an apparent basis of truth, but it was a cunningly contrived imputation suggested by the well-known eager desire of British manufacturers for the American market. If mud is thrown, some generally sticks; and this flimsy accusation was undoubtedly a contributing cause to the failure of the well-directed efforts in 1870 and 1872 towards a systematic lowering of the tariff. Garfield, who was always safer to espouse the right cause on the start than he was to stick to it under a fire of hostile criticism, was bitterly attacked because he had been made an honorary member of the Cobden Club; moreover his position as a tariff reformer was at the best difficult to maintain, for a large part of his district was engaged in the iron industry and the men directing it were uncompromising high protectionists.<sup>1</sup>

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<sup>1</sup> Garfield's attitude on the tariff of 1870 is clearly indicated in his speech of April 1, 1870 (*Globe Appendix*, p. 268 *et seq.*). "Nor will it be denied," he said, "that the scholarship of modern times is largely on that side; that a large majority of the great thinkers of the present day are leading in the direction of what is called free trade." (268, col. 1.) "We are limited in our tariff legislation by two things: first, the demands of the Treasury, and, second, the wants and demands of American industry. . . . American industry is labor in any form which gives value to the raw materials or elements of nature. . . . All these . . . deserve the careful and earnest attention of the Legislature of the nation." (269, col. 3.) "The demand is now made from many parts of the country, and not without reason, that the war tariff shall also be adjusted to the conditions of peace. . . . I doubt if there is any man on this floor whose constituents will be more seriously affected by the passage of this bill than my own." (270, col. 3.) "I refuse to be the advocate of any special interest against the general interests of the whole country. Whatever may be the personal or political consequences to myself, I shall try to act, first for the good of all, and, within that limitation, for the industrial interests of the district which I represent. But I desire to say to the committee . . . that if I can prevent it I shall not submit to a considerable reduction of a few leading articles in which my constituents are deeply interested when many others of a similar character are left untouched or the rate on them increased. . . . Now, this bill reduces the duty on pig iron \$2. . . . If the House of Representatives thinks that this ought to be done, and if I shall be convinced that the public good requires it, I shall not resist it. . . . If this is a bill to increase generally the duties on iron, I shall resist

The movement for a reduction of the tariff was honest and sound. The Western farmers, and the dwellers in Western towns and cities dependent upon them for business, had become convinced that while a high tariff might benefit New England and Pennsylvania it was a drain upon themselves. Two years of bountiful harvests with a diminishing foreign demand for grain and constantly declining prices had led them to believe in a reciprocal foreign trade and to see the fallacy of Greeley's Chinese Wall. The enlightened self-interest of the West was supported by the trade demands of New York and other Eastern cities and by the theoretical economists of New England, all of whom had an able advocate in the public service in David A. Wells. Wells, at first a protectionist, had become, during his service as special commissioner of the revenue, the earnest exponent of a lowering of the tariff, having been led to this change of opinion mainly through a process of induction from facts learned in the course of his departmental work; or in other words he was decided by his actual experience as a practical man, not by the logic of the theorist. To counteract the effect of his reports he was charged with having been bribed by "British gold" to change his mind; such an allegation was actually made on the floor of the House by William D. Kelley.<sup>1</sup> It was cruelly untrue<sup>2</sup> but was believed by many honest men

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this decrease on the leading article manufactured by my constituents." (271, col. 1, 2.) "Now, I agree with the Committee of Ways and Means that it is a wise policy to make a moderate reduction of some of the existing rates of duty, and I am ready to aid in such reductions; but I shall insist upon fair dealing all around." (Ibid., col. 2.) "After studying the whole subject as carefully as I am able I am firmly of the opinion that the wisest thing that the protectionists in this House can do is to unite in a moderate reduction of duties on imported articles; . . . if I do not misunderstand the signs of the times, unless we do this ourselves, prudently and wisely, we shall before long be compelled to submit to a violent reduction made rudely and without discrimination, which will shock if not shatter all our protected industries." (Ibid., col. 3.)

<sup>1</sup> Jan. 11, 1870. *Globe*, pp. 370, 371.

<sup>2</sup> Stanwood, vol. ii. p. 160.

and had a wide currency. Wells's term expired by limitation on July 1, 1870 and an act of Congress was necessary to continue the office. A majority of the senators and representatives joined in a letter to him declaring their confidence in him as a useful and faithful servant; and it was said that Henry L. Dawes, a protectionist, ascertained that a two-thirds majority could be obtained in favour of continuing the office with the understanding that Wells be reappointed. To this Boutwell was opposed and he induced the President to declare against it: Grant's position proved an effectual bar to any action in the matter by Congress.<sup>1</sup> It was a victory for the protectionists and Wells's ability and industry were lost to the public service.<sup>2</sup>

The Tariff Act of July 14, 1870 was a compromise in which the protectionists got the better of it by preventing a general systematic reduction of the duties. The most notable gain of the reformers was the reduction of the duty on pig-iron from \$9 to \$7 per ton, but the duty on bessemer steel rails, which were then just coming into use and being manufactured in our country, was fixed at  $1\frac{1}{4}$  cents per pound or \$28 per gross ton. The duty on tea was reduced from 25 to 15 cents per pound; on coffee from 5 to 3 cents; on sugar of the lowest grade from 3 to  $1\frac{3}{4}$  cents: these lowered the taxes on the breakfast table, a favourite idea of the protectionists. One hundred and thirty articles, mostly of the nature of raw materials, were put upon the free list.<sup>3</sup> The reduction in tariff taxation by this

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<sup>1</sup> *The Nation*, July 7, 1870, p. 2; *Springfield Weekly Republican*, June 10; *Boston Daily Advertiser*, June 30; Johns Hopkins University circulars, vol. xviii. p. 37.

<sup>2</sup> The *Springfield Republican* said that Wells's is "a better reputation than any man in this country ever won off a battlefield in so short a time." — Cited by *The Nation*.

<sup>3</sup> Besides the Act itself I am indebted for this summary to Stanwood and Taussig.



act was 5 per cent., reckoning the free and dutiable articles together.<sup>1</sup>

The Tariff bill was tacked on to the bill for the reduction of internal taxes, which was a part of the act of July 14, 1870, and "brought the system of internal revenue taxation down to the level at which it was maintained until 1883. The taxes left were those on spirits, tobacco, fermented liquor, adhesive stamps, banks and bankers and a small amount on manufactures and products;"<sup>2</sup> also the income tax. The reduction of internal revenue taxation accomplished by this act amounted to 54 millions.<sup>3</sup>

The Income tax was reduced to  $2\frac{1}{2}$  per cent. with an exemption of \$2000; it should expire with the year ending December 31, 1871. This tax, first imposed in 1861 and from time to time increased, became unpopular after the end of the war; and the internal revenue assessor who received the returns and assessed the tax was looked upon as an enemy. Those who were affected by it raised a loud clamour, whilst the masses, who paid no income tax, apparently failed to appreciate that it eased some of their burdens, so that it lacked the support of a vigorous popular sentiment. During its eleven years' existence there were collected from it 347 millions.<sup>4</sup> Though it would seem to be justified by this large amount, the fact is it did not get to working well till towards the close of the war and failed to produce

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1 Average duty on dutiable	1870	47 $\frac{5}{7}$ %
Average duty on dutiable	1872	41 $\frac{1}{3}$ %
Average duty on free and dutiable	1870	42 $\frac{1}{4}$ %
Average duty on free and dutiable	1872	37 %

Report on Commerce and Navigation, year ending June 30, 1872. The new duties went into effect Jan. 1, 1871.

<sup>2</sup> Dewey, Financial History, p. 394.

<sup>3</sup> In round numbers the Internal Revenue for 1870 \$185,000,000

In round numbers the Internal Revenue for 1872 131,000,000

— Statistical Abstract, 1878.

The decline in 1873 to \$114,000,000 I take to have been largely due to the panic.

<sup>4</sup> Dewey, Financial History, p. 306.

much revenue at the time when it was most needed. The precarious nature of incomes, the equivocal wording of the act and the general laxity of administration opened a wide door to evasions. The tax was said to be a bid for perjury.

As compared with the present time, bonds and stocks were little held for investment. Coincidentally with the increase of investors and the change of investments from houses and lands to paper representations of value, the number of joint-stock companies has increased. Their system of registration and the publicity with which they pay their interest and dividends would now lend itself to the collection of a large part of an income tax by deductions from the checks mailed to the bond and stock holders by the Treasurer of the Company. One section of the Act of 1870 did indeed provide for such a collection but it must have been far less productive than it would be at the present day. The amount of any income was then ascertained mainly from the return of the individual and, while every sort of income was defined in the act, the amount taxed was, except in cases of flagrant evasions, left to the honour of the man making the return. A large list of authorized deductions was cunningly made of avail in reducing the amounts of taxable incomes. When, as the Act of 1870 provided, there might be deducted "all losses actually sustained during the year arising from fires, floods, shipwreck, or incurred in trade and debts ascertained to be worthless,"<sup>1</sup> and the amount of these was left for the taxpayer himself to estimate, it is easy to see how men, fairly scrupulous, might swell the list of deductions by giving themselves the benefit of every doubt. An article on the subject, written by Mark Twain, in 1870 or 1871 obtained a wide currency, appealing as it did to

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<sup>1</sup> Losses by "fires, shipwreck or incurred in trade and debts ascertained to be worthless" are deductions first allowed by the Act of March 2, 1867. "Floods" are first mentioned in the Act of 1870.

the humorous sense of people who suspected their neighbours of a systematic evasion of their income tax.

When a new resident of a town, as Mark Twain relates the story, he received a call from a stranger and, being in an expansive mood, took to boasting of the amount of money he had made during the previous year. His lecturing receipts had been \$14,750; his income from the *Daily Warwhoop* \$8000; his royalty from "The Innocents Abroad" \$190,000, making a total of \$214,000. When he had thus unbosomed himself, the stranger who was the assessor of the Internal Revenue, handed him a blank which to his dismay turned out to be one for the income tax return. Twain had declared an income of \$214,000; \$1000 was exempt by law; this left \$213,000 on which the tax at 5 per cent amounted to \$10,650.<sup>1</sup> In despair he went for advice to an acquaintance, an opulent man who lived in a palace and paid no income tax, and he was told how he might make himself out a pauper "by deftly manipulating the bill of Deductions." The opulent man took up his pen and set down his "Losses by shipwreck, fire," etc. at so much; "losses on sales of real estate," on "live stock sold," on "repairs, improvements, interest," etc., etc., at so much more. "He got astonishing deductions out of each and every one of these matters," writes Mark Twain; "and when he was done he handed me the paper and I saw at a glance that during the year my income in the way of profits had been \$1250.40." Thus far it was all fun but as was the author's wont, fun was used as an introduction to satire. "'Now,' said the opulent man, 'the thousand dollars is exempt by law. What you want to do is to go and swear this document in and pay tax on the two hundred and fifty dollars.' 'Do you,' said I, 'do you always work up the deductions after this fashion in your own

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<sup>1</sup> Laws previous to 1870 had made an exemption of \$1000 with a tax of 5 per cent.

case, sir?' 'Well, I should say so! If it weren't for those eleven saving clauses under the head of Deductions, I should be beggared every year to support this hateful and wicked, this extortionate and tyrannical government.' This gentleman stands away up among the very best of the solid men of the city — the men of moral weight, of commercial integrity, of unimpeachable social spotlessness — and so I bowed to his example. I went down to the revenue office and, under the accusing eyes of my old visitor, I stood up and swore to lie after lie, fraud after fraud, villany after villany, till my soul was coated inches and inches thick with perjury and my self-respect gone forever and ever. But what of it? It is nothing more than thousands of the richest and proudest and most respected, honored and courted men in America do every year."<sup>1</sup>

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<sup>1</sup> A Mysterious Visit, in Mark Twain's Sketches (1875).



## CHAPTER XXXVII

I SHALL now return to the subject of Reconstruction. Virginia in due time ratified the Fourteenth and Fifteenth Amendments, and Grant in his first annual message [December 6, 1869] recommended that her senators and representatives elect "be promptly admitted to their seats and that the State be fully restored to its place in the family of States." He would have made a similar recommendation in regard to Mississippi and Texas had the result of their elections been known. In January 1870 Congress took up the case of Virginia. It had been carefully considered by the Senate Committee on the Judiciary, of which Trumbull was still the head and among his associates were the able lawyers George F. Edmunds, Roscoe Conkling, Matthew H. Carpenter<sup>1</sup> [Republicans] and Allen G. Thurman<sup>2</sup> [Democrat]. Various propositions imposing additional conditions were discussed in this Committee but they finally came almost unanimously to the conclusion that it "was better to pass a simple resolution declaring the State of Virginia entitled to representation in Congress" because she has done everything which Congress required her to do.<sup>3</sup> Such a resolution was reported to the Senate but the Radicals were determined to tack on new conditions. The expulsion of the negroes from the Georgia legislature, Georgia's vote for Seymour, the

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<sup>1</sup> The new senator from Wisconsin succeeding Doolittle.

<sup>2</sup> The new senator from Ohio succeeding Wade. Stewart and Rice were the other members of the Committee.

<sup>3</sup> Trumbull, Jan. 13, 1870, *Globe*, p. 419.

Conservative victory in Virginia, foreshadowing Democratic ascendancy, were a warning that at least two States were slipping from the grasp of the Republicans; and the Radicals set themselves to work to see if by some ingenuity they could not still keep Virginia under the control of Congress. While the Senate was discussing amendments which had this end in view the House, after having gone through much the same process, passed a bill in the exact words reported by the Senate Judiciary Committee. The Senate then laid its own resolution on the table and took up the bill of the House but in the end the Radicals prevailed and succeeded, despite the opposition of Trumbull, Conkling and Carpenter, in imposing further conditions on Virginia in return for her representation in Congress. The House concurred in the Senate amendments and the act was approved by the President.<sup>1</sup>

This act provided that every member of the Virginia legislature should take an oath showing that he did not labour under the disability of the Fourteenth Amendment or that the disability had been removed. It further prescribed these "fundamental conditions": the Constitution of Virginia should never be amended or changed so as to deprive any citizen or class of citizens of the suffrage or of school rights and privileges; it should not "be lawful for the said State to deprive any citizen of the United States on account of his race, color or previous condition of servitude of the right to hold office" or "upon any such ground" impose discriminating qualifications for office. This last provision was obviously to prevent an ousting of negro members from the legislature such as had taken place in Georgia.<sup>2</sup>

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<sup>1</sup> Jan. 26, 1870, printed by McPherson, p. 572. My main authority is the *Globe*, but I have been helped by Appletons' *Annual Cyclopædia* for 1870 and by McPherson.

<sup>2</sup> Besides the statute see Dunning, p. 235.

On the day after the approval of this act [January 27, 1870] the government of Virginia was turned over from the military to the civil authority; her senators and representatives were soon afterwards sworn in "and the reconstruction of the State was formally complete."<sup>1</sup>

Mississippi and Texas duly ratified the Fourteenth and Fifteenth Amendments and were readmitted to the Union under exactly the same conditions as Virginia.<sup>2</sup> The moderate Republicans made an effort to receive Mississippi without the exaction of these terms but they were defeated by the Radicals. Trumbull earnestly opposed this rescinding of an obligation of Congress and contributed to the debate an opinion of high legal and constitutional value. "It is believed," by the Judiciary Committee of the Senate, he said "that Congress has no authority to impose such conditions; that they have no binding efficacy; that their effect is evil and evil only; and that it is keeping up a distinction in regard to the States which can do no good and may do much harm. . . . I believe that when a State is entitled to representation in this Union and becomes one of the States of the Union, it is a full and complete State, with all the rights in all respects of every other State. I want the State of Mississippi here as a full-grown State. I want its representatives to stand up in the Congress of the United States as the representatives of a coequal State of the Union and not of an inferior and subordinate State or a State with conditions imposed upon it not imposed upon the other States of the Union."<sup>3</sup>

Mississippi and Texas were turned over to the civil authority; their senators and representatives were ad-

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<sup>1</sup> Dunning, p. 236; Appletons' Annual Cyclopædia, 1869, p. 715; *Globe*; McPherson.

<sup>2</sup> Feb. 23, March 30, 1870, *Globe*; McPherson; Garner; Appletons' Annual Cyclopædia, 1870.

<sup>3</sup> Feb. 10, 1870, *Globe*, p. 1174.

mitted to Congress.<sup>1</sup> The swearing-in of one senator from Mississippi evidenced the revolutionary stride the country had taken in less than a decade. Rev. Hiram R. Revels, a quadroon, the first coloured man to sit in the Senate, qualified as the successor of Jefferson Davis.<sup>2</sup>

All the Confederate States had now been reconstructed, but Georgia after having been readmitted to the Union had fallen under the displeasure of Congress because of the expulsion of the negro members of her legislature and the seating therein of white men ineligible under the Fourteenth Amendment. Her senators-elect had never been permitted to take their seats, and on the organization of the Forty-first Congress in March 1869 her representatives were shut out from the House:<sup>3</sup> she was now subjected again to the process of reconstruction.

During the summer and autumn [1869] affairs were unsettled in Georgia. The Supreme Court of the State decided that negroes were eligible to office and the Conservatives would gladly have restored the legislature, as it had been, negroes included. But such an arrangement did not suit Governor Bullock as it would not give him an efficient majority. He desired drastic action from Congress, and, using the weapon certain to affect popular sentiment at the North, he represented that there was a recrudescence of the Ku-Klux outrages. At about the same time a political note was sounded from Massachusetts. Senator Henry Wilson, who kept in touch with his constituents and always had an eye to party advantage, wrote to President Grant: "Can nothing be done to stop the outrages in Georgia? These political murders should cease. Nothing ani-

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<sup>1</sup> McPherson, p. 507.

<sup>2</sup> Garner, pp. 271, 275; *Globe*, Feb. 25, 1870, p. 1568; Blaine, vol. ii. p. 448, also steel portrait facing p. 304; Appletons' Cyclopædia of Biography. Garner writes that Revels did not have Davis's seat.

<sup>3</sup> Dunning, p. 238; *Globe*.



mated the people more in the canvass than the idea that the rebel outrages should be stopped. They were checked much by your election; still they go on and many of our best friends say that we do nothing to stop them and that we rather say nothing about them. I fear that unless something is done many of our most devoted friends will grow dissatisfied.”<sup>1</sup> This was referred to Terry, the general in command, who in August made a report in which he said that abuse and murder of negroes owing to the hostility of race were common. The Ku-Klux-Klans, he continued, spread terror throughout the community and perpetrate crimes for which they are not punished; indeed in some places the magistrates are in sympathy with these organizations while in others they are overawed. The majority of the people probably do not countenance these outrages but they are afraid to resist “the rule of the disorderly and criminal minority.” The executive is powerless and in many parts of the State there is practically no government. The sole remedy, Terry declared, is that Congress and the Executive remand Georgia to military rule.<sup>2</sup> This report was undoubtedly one of the influences which induced Grant in his annual message of December 6, 1869 to suggest to Congress the reorganization of the legislature of this State. Congress acted promptly and passed a law which was approved December 22. This provided that members of the Georgia legislature must take an oath in set words to the effect that they did not labour under the disfranchisement of the Fourteenth Amendment or that their disability had been removed; that no negro on account of his colour should be excluded; that upon the application of the governor the President should employ what military force was necessary to execute the act; and

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<sup>1</sup> May 14, 1869, S. E. D., No. 3, 41st Cong. 2d Sess., p. 1.

<sup>2</sup> *Ibid.*, pp. 2, 3.

that before her senators and representatives were admitted to Congress Georgia must ratify the Fifteenth Amendment.

Terry was assigned to the command of the State and, by order of the President, was given all the powers delegated to the military commanders by Congress in the Act of March 2, 1867 and the acts supplementary thereto. Bullock at once called a meeting of the legislature which was subjected to an operation that may be called Terry's purge. Terry ousted twenty-four Democrats; the legislature filled their places with Republicans and also readmitted the negroes who had been expelled. Bullock now had absolute control and, obedient to his bidding, the legislature ratified the Fourteenth<sup>1</sup> and Fifteenth Amendments and elected two new senators.<sup>2</sup>

Georgia's affairs were now again transferred to Congress. Butler, who had succeeded Stevens as the Chairman of the House Committee on Reconstruction, reported a bill from his committee to admit Georgia to representation in Congress; a bill which prescribed the "fundamental conditions" that had been imposed on Virginia and Mississippi and also carried with it the prolongation of the present State legislature two years beyond the time at which it would otherwise expire: that is to say the election which the Constitution of Georgia provided should take place in November 1870 would be postponed and the purged legislature would hold on for another term. Butler asserted in the boldest terms the power of Congress over the reconstructed States and maintained that it was its duty "to deal with and punish all violations of the rights of our citizens and protect them in persons and property where

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<sup>1</sup> To cure a possible defect in the earlier ratification.

<sup>2</sup> Dunning; Avery, *History of Georgia*; Appletons' *Annual Cyclopædia*, 1869, 1870; McPherson; *Globe*; Woolley, *Reconstruction of Georgia*; Report of Senate Judiciary Committee, Report No. 58, 41st Cong. 2d Sess.

the State governments are either powerless or indisposed so to do.”<sup>1</sup> But Butler and his radical friends could not carry the House with them. Bingham offered an amendment which prevented the prolongation of the radical legislature and practically declared for the election in 1870. This the House voted by 115:71, (the Democrats acted with the moderate Republicans) and then passed the bill thus amended.<sup>2</sup>

In the meanwhile the Senate Judiciary Committee had been considering the matter and they reported unanimously that Terry’s purge and the subsequent reorganization of the Georgia legislature were not according to law: they declined to recommend any further legislation.<sup>3</sup> The Senate had before them this report when they took up the House bill and entered into the contest whether Bullock’s legislature should be given an additional life of two years. “The Lecompton swindle,” declared Trumbull, “was not more iniquitous, when an attempt was made to force it upon the people of Kansas, than would be an act of the Congress of the

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<sup>1</sup> March 4, 1870, *Globe*, p. 1704. He said further, “If the judgment of the House goes with mine I trust we shall also exhibit to Tennessee the power that Congress has to protect all of its citizens . . . against wrong, rapine and murder.”

The conditions in Tennessee are succinctly stated by Fertig (*The Secession and Reconstruction of Tenn.* p. 12): Casting 145,000 votes in 1860 she furnished 115,000 Confederate and 31,000 Union soldiers. No other seceding State had so many Union men. She was the only one which escaped military reconstruction and “carpet-bag government,” and “the only one in which the battle for political power was fought out between factions of native whites.”

Tennessee was readmitted to the Union in July 1866 and adopted negro suffrage. Her laws disfranchising former Confederates were stringent and Brownlow and his Radicals maintained their harsh and unscrupulous rule until 1869 when the Republican party divided into two factions, nominating two candidates for governor. The Democrats supported the conservative Republican who was elected in August and at the same time a Democratic legislature was chosen. This restored Tennessee to the rule of intelligence and property. See Appletons’ *Annual Cyclopædia*, 1869. <sup>2</sup> Mar. 8.

<sup>3</sup> Report No. 58, 41st Cong. 2 Sess., pp. 8, 10, 11. The Committee on the Judiciary were Trumbull, Edmunds, Conkling, Carpenter, Stewart, Rice, Republicans; Thurman, Democrat. The report was made by Edmunds.

United States which should force the people of Georgia to submit for two years to a government set up by a minority and held against the will of the people." He addressed himself to the stock argument: I doubt not that many of the newspaper telegraphic reports of terror are "in response to telegrams emanating from this city. The telegraph is used to create a public sentiment to operate upon Congress."<sup>1</sup> Morton and Sumner led the Radicals. "I denounce the Bingham Amendment," Morton said, "as being in the interest of the rebels, as carrying exultation to every unrepentant rebel in the South." Similar was the argument of Sumner: "The Bingham Amendment is in few words but they are words of despair to the loyal men of Georgia and words of cheer to the disloyal."<sup>2</sup> Edmunds, who brought his clear legal mind and power of sarcasm to the aid of Trumbull, stated the case exactly: "We are asked," he said, "in admitting this State to admit her with a legislature which is undeniably composed in defiance of her own constitution, in defiance of fundamental principles of political justice, as it respects the rights of majorities and minorities and to set up that legislature with the full powers of a State government." He had previously said: "We ought to extend this invention, to the other Southern States; and I would suggest to extend it to the Democrats of the Northern States too, because it will save us possibly a good many doubtful States. Let us provide by a general act, in the interest of human rights, that not only this legislature, which we have now got into a condition of loyalty, and Republicanism too, I will add, by the introduction of fifteen or twenty good Republicans who would have been in before if they had got votes enough, but that in all doubtful States . . . the existing legislatures when Republican,

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<sup>1</sup> March 14, 1870. *Globe*, p. 1928.

<sup>2</sup> Appletons' *Annual Cyclopædia*, 1870, pp. 135, 140.



shall hold over for two years more; and it might be wise, as we have an election for members of Congress this fall, to apply it to the present House of Representatives at the other end of the Capitol.”<sup>1</sup>

On the part of the Radicals, Senator Henry Wilson said with frankness, “Law or no law we want to keep this State government in power;”<sup>2</sup> and this gave a point to Carl Schurz’s statement that what was proposed was an “act of usurpation.” Schurz brought his close political logic and sound philosophy to bear in a telling and unanswerable argument.<sup>3</sup> The Senate, like the House, refused to adopt the prolongation scheme but passed a different bill<sup>4</sup> and therefore the struggle went on. Bullock spent a good part of the time in Washington and proved an energetic and unscrupulous lobbyist. His operations attracted the attention of the Senate who directed an investigation by its Committee on the Judiciary. Trumbull, Edmunds, Conkling, Carpenter and Thurman joined in a report charging that corrupt and improper means had been used to influence the vote of senators on the Georgia question.<sup>5</sup> Had not Bullock’s case already been lost, this would have given it a quietus. After much consideration and after differences between the two Houses, a bill was agreed on which declared that Georgia was entitled to representation in Congress; pronounced in set terms against Bul-

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<sup>1</sup> March 15, 1870. *Globe*, pp. 1955, 1958. The sarcasm in the last clause will be better understood when I state that the Republicans had more than two-thirds majority in the House of which Edmunds spoke and considerably less in the House that was elected in the autumn of 1870.

<sup>2</sup> Cited by Schurz, *Globe*, p. 2064.

<sup>3</sup> *Ibid.*, p. 2061 *et seq.* To give a just idea of it long extracts would be necessary. The whole speech is well worth reading. Schurz took his seat as senator from Missouri, March 4, 1869, succeeding Henderson.

<sup>4</sup> April 19. Carpenter acted with the Moderates, Stewart with the Radicals. Conkling did not speak on the question and failed to vote on many of the important divisions.

<sup>5</sup> May 19, Report No. 175, 41st Cong. 2d Sess. Stewart and Rice made a minority report.

lock's prolongation scheme; and confirmed the right of the people of Georgia to an election for members of the legislature in November, 1870: this became a law July 15.<sup>1</sup>

This was the first substantial victory of the conservative or moderate Republicans since January 1867 when Congress had tackled the problem of Reconstruction anew; and this was largely due to the nascent perception in Northern minds that the ignorant constituencies at the South were selecting incompetent and corrupt officials and that many of the "carpet-baggers" and "scalawags" were disreputable and unscrupulous men. The victory was only possible with the aid of the Democrats. The inferior parliamentary leadership of Butler to Stevens was doubtless a factor; but if the House was no longer subject to the sway of Stevens's sarcasm and indomitable will, the Senate, on the other hand, had lost in Fessenden one of its mightiest Conservatives, a man in whom high legal learning, constructive ability and unselfish devotion to duty were combined to make a model senator.<sup>2</sup>

On March 30, 1870, President Grant did something that he said was "unusual" when he sent to Congress a message notifying them that the Secretary of State had issued a proclamation, declaring that three-fourths of the States had ratified the Fifteenth Amendment and that it had therefore "become valid" as a part of the Constitution. "I deem a departure from the usual custom justifiable," he said, as to make voters of 4,000,000 people<sup>3</sup> who the Supreme Court declared

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<sup>1</sup> *The Globe* is my principal authority but I have been much assisted by McPherson and Appletons' Annual Cyclopædia, 1870. I have also consulted Avery, Woolley, Dunning, Pierce's Sumner, vol. iv. Foulke's Morton, vol. ii.

<sup>2</sup> Fessenden died Sept. 8, 1869.

<sup>3</sup> An inexact statement. He referred to population according to the census of 1860 which gave the coloured population as 4,435,709. The coloured population of the whole country in 1870 was 4,880,009. The number of coloured males 21 and upward was 1,032,475; of these 931,665 were in former slaveholding States. Census report, vol. ii. p. 619.

"had no rights which the white man was bound to respect" is an act of the grandest importance in the history of our free government.<sup>1</sup> The consummation of this third organic act in the interest of the negroes caused them and their white friends to rejoice greatly.<sup>2</sup>

Although the Republicans had differed on the Georgia bill, the Conservatives and Radicals were practically at one in regard to the enforcement of the Fourteenth and Fifteenth Amendments and, soon after the ratification of the Fifteenth by the States, a bill for the purpose of enforcing the two Amendments<sup>3</sup> engaged the attention of Congress, which after considerable debate, many amendments and a difference between the two Houses, resulted in the adoption by a party vote<sup>4</sup> of the report of the Committee of Conference and the approval by the President on May 31 of the bill thus passed. The theory of a large part of the act was thus stated by Senator Morton, "The true intent and spirit of the Fifteenth Amendment is that the colored man, so far as voting is concerned, shall be placed upon the same level and footing with the white man and that Congress shall have the power to secure to him that right; . . . and that involves the exercise of the power upon individuals."<sup>5</sup> Senator Schurz was luminous in his statement. "The scope and purpose of this bill," he said, "is that no State shall enforce a law with regard to elections, or the processes preliminary to elections, in which in any way, either directly or indirectly, discrimination is made against any citizen on account of race, color or previous condition; and when any citizen is

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<sup>1</sup> Richardson, vol. vii. p. 55; McPherson, p. 545.

<sup>2</sup> *The Nation*, April 14, May 5, 1870, pp. 231, 279.

<sup>3</sup> Section 2 of the Fifteenth Amendment reads, "Congress shall have power to enforce this article by appropriate legislation." Section 5 of the Fourteenth Amendment is similar. See vol. v. p. 597, note 1.

<sup>4</sup> Trumbull voted with Sumner and Bingham with Butler.

<sup>5</sup> May 20, 1870, *Globe*, pp. 3670, 3671.

hindered in the exercise of the right of suffrage by means of fraud, intimidation, or violence, or misuse of official power, the offender shall be brought to trial and punishment by a Court of the United States, [Section 8 of the Act gave the United States Courts exclusive jurisdiction]. . . . In other words neither a State nor an individual shall deprive any citizen of the United States, on account of race and color, of the free exercise of his right to participate in the functions of self-government; and the national Government assumes the duty to prevent the commission of the crime and to correct the consequences when committed.”<sup>1</sup>

Fate, delighting in irony, had decreed that the machinery for the enforcement of the Act should be borrowed from the Fugitive Slave Law of 1850, a circumstance which gave rise to an animated debate between Senators Edmunds and Thurman. Edmunds asked the Secretary of the Senate to read the fifth section of the earlier law, then pointed out its substantial resemblance to the section they were considering twenty years later and said: “When one of these provisions was in favor of slavery, in favor of carrying back an escaping fugitive to servitude and to the lash, it was very convenient for a party that then controlled the country to pass acts of Congress to carry out such an odious provision of the Constitution and to authorize commissioners to call upon the whole body of the country, soldiers and sailors, marines, Army and everything, to help carry the poor hunted fugitive back. Now times have changed after twenty years; and with the fugitive liberated and made a free and independent man of, when we apply the same machinery to protect him in the rights that the Constitution gives him, my friend from Ohio [Thurman] changes with the tune of his party, and sings that this is outrage and oppression!”<sup>2</sup> Truly did Schurz declare on the follow-

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<sup>1</sup> May 19, 1870, *Globe*, p. 3608.

<sup>2</sup> May 18, 1870, *Globe*, p. 3566.



ing day : " This Republic has passed through a revolutionary change of tremendous significance. The Constitution has been changed in some most essential points ; that change does amount to a great revolution and this bill is one of its legitimate children." <sup>1</sup>

Section 6 of the Act was directed towards the suppression of the Ku-Klux-Klan ; section 13 authorized the President to employ when necessary the military force of the country " to aid in the execution of judicial process issued under this act." Following section 13 were a number of provisions for the special enforcement of the Fourteenth Amendment. Five years later the United States Supreme Court decided the essential parts of this Act unconstitutional.<sup>2</sup>

With the passage of the Georgia act [July 15, 1870] Congress had apparently completed their labour of Reconstruction ; but, aided by a president who was in sympathy with them, they proposed to watch over the work

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<sup>1</sup> May 19, 1870, *Globe*, p. 3607. The essential features of the bill then discussed in the Senate are in the Act as finally passed.

<sup>2</sup> In 1875 the Supreme Court of the United States decided sections 3 and 4 of this act to be unconstitutional " as involving the exercise by the United States of powers in excess of those granted by the Fifteenth Amendment." Dunning, *Atlantic Monthly*, Oct. 1901, p. 442. *U.S. v. Reese*, 92 U.S. 214, 216-221.

Later in the same year the Supreme Court " threw out an indictment under which a band of whites who had broken up a negro meeting in Louisiana had been convicted of conspiring to prevent negroes from assembling for lawful purposes and from carrying arms." — Dunning, *ibid.* This decision abrogated the sixth section of the Act. Chief Justice Waite delivered the opinion as indeed he did in the earlier case. He said : " The Fourteenth Amendment . . . adds nothing to the rights of one citizen as against another. It simply furnishes an additional guarantee against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. . . . The equality of rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of the principle if within its power. That duty was originally assumed by the States ; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the Amendment guarantees but no more. The power of the national government is limited to the enforcement of this guaranty." *U.S. v. Cruikshank*, 92 U.S. 554, 555 ; see also 542-559.

and maintain control of the reconstructed States.<sup>1</sup> We have now to consider the operation of the State governments at the South under the dual jurisdiction. As we have been recently engaged with affairs in Georgia and as that State was one of the first to recover home rule, it will be a natural method of relation to continue her story.

Bullock, though balked in his scheme for prolonging his and Terry's purged legislature by the refusal of Congress to support him, nevertheless set about to accomplish his purpose in another way, for on it depended his political life. At his bidding, the Georgia Senate passed a resolution that the legislature should not meet until January 1872, that no election for members of it should be held until November of that year and that all State officers should remain in office until after such election. The contest in the Georgia House was fierce, and the decisive factor in it was the attitude of President Grant. "I broke up Bullock's scheme," declared Benjamin H. Hill. "I went to Washington . . . and I kept General Grant from interfering. People said that I 'tricked' General Grant. I didn't. I 'tricked' no man."<sup>2</sup> But Hill and other men, who brought pressure to bear, did more than prevent the President from giving assistance to Bullock, for the fact is he exerted his influence on the other side. This was done through his Attorney-General, A. T. Akerman, a citizen of Georgia, [the successor of E. R. Hoar] who, on the appeal of a number of prominent members of the legislature wrote a letter to them [August 8, 1870], urging that an election be held before the close of the year. Joseph E. Brown, Chief-Justice of Georgia by the appointment of Bullock, worked zealously against the

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<sup>1</sup> See Dunning's thoughtful summing-up, *Essays on the Civil War and Reconstruction*, p. 247. I take this occasion to say that my obligations to Dunning's book are much greater than even my many references would seem to indicate.

<sup>2</sup> Speech, Jan. 20, 1877. *Life of B. H. Hill*, Hill, Jr., p. 490.

scheme of his governor and the Georgia House amid great excitement voted it down by 72 nays to 63 yeas, twelve Republicans voting with the Democrats.

Still Bullock would not give up the game. He induced the legislature to pass an election law which would give the Radicals a good chance of carrying the State. December 22 was fixed for the election but it was to continue for three days. This it is alleged was to enable the negroes to practise "repeating" by giving them time to travel from precinct to precinct. It was further provided that no votes should be challenged, none refused. And in order that negroes might not be disfranchised for non-payment of taxes the legislature declared the poll tax levied for the last three years illegal.

The people of Georgia felt that their property and their comfort of living were at stake. *The Nation* [presumably Godkin] declared that the officials of Georgia were "probably as bad a lot of political tricksters and adventurers as ever got together in one place"; under military superintendence they scrambled for all the "places of trust and profit, by means of nearly every device known to the gambling-house, the mock-auction room and the thimble-rigger's table"; they depended mainly for their support upon "a large newly enfranchised and very ignorant constituency to whom the very forms of Government, not to speak of its principles, are still unfamiliar."<sup>1</sup> If a supporter of Congressional reconstruction could write in that manner it is not surprising that the people of Georgia were bitterly discontented at the general plundering of the State by the government and that they went into the canvass with gravity and determination. It does not appear that there were any signal Ku-Klux outrages or intimidation of negroes. No such hostility of white against black had been excited as in South Carolina and Alabama where the plantations

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<sup>1</sup> March 17, 1870, p. 165.

were larger and the two races not so closely in contact. The small farms and, for the most part, salubrious climate of Georgia permitted owners of land to reside upon their estates and direct the cultivation of their crops: such intimacy was favourable to persuasion and bribery of the negroes to vote the Democratic ticket or to stay away from the polls.

Benjamin H. Hill took part in the canvass and wrote an address to the People of Georgia [December 8, 1870]. The three amendments he said, "are in fact and will be held in law fixed parts of the Constitution, as binding upon the States and people as the original provisions of that instrument." These amendments will not be repealed for "the great body of the Northern people regard the freedom and the civil and political equality of the negro as great national, philanthropic and religious results." We must, he said in effect, accept the situation, abide by and obey the Constitution as it now is and regard negro suffrage as an accomplished fact. "It is of first importance," he continued, "that you choose honest men" for the legislature. "We are suffering for wise and honest legislation. We can never get such legislation unless you elect members whom feed lobbyists cannot buy. A black man who cannot be bought is better than a white man who can and a Republican who cannot be bought is better than a Democrat who can."<sup>1</sup> Hill of course desired the success of the Democrats but by this letter he brought upon his head the abuse of the extreme men of his party; he even received a Ku-Klux-Klan missive warning him as a Radical to leave the State.<sup>2</sup> It is somewhat difficult to measure the effect of Hill's advice upon the voters at the approaching election. Certainly it attracted great attention; and the animosity he excited in one quarter may well

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<sup>1</sup> Life of B. H. Hill, pp. 56-59.

<sup>2</sup> "Damned Radical" were the words. Hill thought the warning a joke. Ku-Klux report, Georgia, vol. ii. p. 772.



have been compensated in another by a strong undercurrent of agreement, compelling men to the polls to rescue their State. Later, be it observed, this much-reviled man received from Georgia her highest honours. Like Joseph E. Brown he had grasped the real difficulties of the case and shown himself a far-seeing statesman.

There was little turbulence on the election days. According to John B. Gordon a large number of negroes voted the Democratic ticket.<sup>1</sup> The Democrats gained a sweeping victory, electing two-thirds of the legislature and five out of seven Congressmen. This result sounded the knell of carpet-bag-negro rule in Georgia. While Bullock's term did not expire with that of his legislature he was at once thrown on the defensive, the charges against him being grave. He was accused of reckless extravagance, excessive pardons of criminals on personal and political grounds, unauthorized and illegal indorsement of railroad bonds and like action in the issue of the securities of the State; in general he was charged with official corruption and venality. His mismanagement of the State railway touched the people of Georgia on a sensitive point. The Western and Atlantic Railroad between Atlanta and Chattanooga, [138 miles,] constructed before 1850 and suffering thenceforth many vicissitudes of fortune, had become, under the material reawakening of the South, a magnificent property. It possessed too a sentimental interest running as it did over historic ground. The traveller who journeyed from Atlanta to Chattanooga in 1870 had from the window or platform of his car a view of an almost continuous series of earthworks which testified to the inch-by-inch struggle between Sherman and Johnston.<sup>2</sup>

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<sup>1</sup> Ku-Klux report, Georgia, vol. i.

<sup>2</sup> This I can testify to from personal observation having passed over the road in 1869. In a booklet and also in a time-table folder the Western and Atlantic R.R. Co. published a map of this campaign which in itself is a history. It is reproduced by Nicolay and Hay, vol. ix. p. 6.

This railroad, a valuable connecting link between other important lines, which under efficient management would have continued to pay a goodly sum into the State treasury, was used for twelve months by Bullock as a political machine. Its incompetent superintendent stated that "he took charge of the road to manage its public and political policy"; and its auditor in reply to the question "how he managed to save up twenty or thirty thousand dollars in a year or two out of a two or three thousand dollars salary," said, "by the exercise of the most rigid economy."<sup>1</sup>

Various attacks on all sides from the now dominant party, and the financial embarrassment of H. I. Kimball, a friend whom the governor had backed in many doubtful enterprises, together with the lack of support from Grant and the Republican party at the North, were a warning to Bullock that the game was up. Fearing impeachment, he spread his resignation, dated October 23, 1871, upon the minutes of the Executive department and fled the State. In 1876 he was arrested and two years later tried on an indictment for embezzlement. Benjamin H. Hill, Jr., who was solicitor-general at the time and assisted in the prosecution, writes that "the most searching investigation failed to disclose any evidence of his guilt and he was promptly acquitted by a Democratic jury."<sup>2</sup>

The regeneration of Georgia which began with the election in December 1870 was completed by the inauguration of a Democratic governor in January 1872. Henceforward she has had home rule and she has uniformly voted for the Democratic candidate for the presidency. A word must be said about the negroes. Miss Frances Butler referring to "late in the winter of 1869" wrote

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<sup>1</sup> Avery, p. 451.

<sup>2</sup> Life of B. H. Hill, p. 61, note. Hill writes further, Bullock was "an honest man and a gentleman . . . and is now [1891] one of the most honored citizens of Atlanta and a welcome guest at any Southern home."

that "the negroes were almost in a state of mutiny"; but in March 1871 said in a private letter, "The negroes are behaving like angels."<sup>1</sup> This is Southern testimony but it contains the kernel of the truth.

Georgia's senators and representatives were admitted to Congress during the months of January and February 1871.<sup>2</sup>

It was said that the redemption of Georgia put her back where she was in 1866 under the Johnson reconstruction plan, but this is not true as she has had universal negro suffrage to reckon with. Moreover the agony and waste under Congressional reconstruction consolidated nearly all respectable men into one party, which is not a healthy political condition. Under the Lincoln-Johnson plan there was a promise of two parties somewhat like those which existed before the war. In 1865 an old Whig had been chosen for governor and an

<sup>1</sup> Ten years on a Georgia Plantation, pp. 155, 193.

<sup>2</sup> Joshua Hill was admitted as a Republican senator on Feb. 1, 1871 (*Globe*, 871). He took the oath of July 11, 1868. H. V. M. Miller was admitted as a Democratic senator, on Feb. 24, 1871 (*Globe*, 1632) after a joint resolution had passed prescribing the oath to be taken by him, that of the Act of July 11, 1868, instead of the iron-clad. As he had never held any position under the United States or State governments before the Civil War, he did not come under the Act of July 11, 1868, having no disabilities to remove, but, having served as surgeon in the Confederate Army, he could not take the iron-clad.

#### REPRESENTATIVES

Marion Bethune, Rep.,	January 16, 1871.	Took oath of July 11, 1868.
W. P. Price, Dem.,	January 16, 1871.	Took oath of July 11, 1868.
P. M. B. Young, Dem.,	January 16, 1871.	Took oath of July 11, 1868.
(These three, <i>Globe</i> , 527).		
J. F. Long, Rep.,	January 16, 1871.	Took iron-clad ( <i>Globe</i> , 531).
W. W. Paine, Dem.,	January 23, 1871.	Took oath of July 11, 1868 ( <i>Globe</i> , 678).
S. A. Corker, Dem.,	January 24, 1871.	Took oath of July 11, 1868.
This seat was contested by T. P. Beard, ( <i>Globe</i> , 707).		
R. H. Whiteley, Rep.	February 9, 1871.	Took oath of July 11, 1868.
This seat was contested by Nelson Tift. 5 Democrats, 2 Republicans.		
Long was a negro.		

This note was furnished me by D. M. Matteson.

overwhelming majority of old Whigs and Union Democrats to the legislature: these men afforded the nucleus for a Republican party in Georgia. Benjamin H. Hill, an old Whig and an ardent supporter of the Southern cause during the war, gave in his testimony before the Ku-Klux sub-committee a true account of the conditions obtaining when reconstruction began. "I tell you frankly," he said, "that after the war ended we the old Whigs and the Union men expected to take control of affairs down here; . . . and I think we would have done it if you had allowed us to do so." But Congress "lumped the old union Democrats and Whigs together with the Secessionists and said that they would punish us all alike; would put us all alike under the negro. That naturally created a sympathy between us and the secession Democrats." Therefore "many of the old Whigs and union Democrats were driven where they did not want to go, into temporary affiliation with the Democratic party."<sup>1</sup>

Through the action of General Schofield<sup>2</sup> Virginia remained under military rule while her sister communities fell under the carpet-bag régime and, to use Schofield's words, she was thus "saved from the vile government and spoliation which cursed the other Southern States." It is true she suffered maladministration through the operation of the Act of February 1869 which forced trained officials to vacate a large

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<sup>1</sup> Testimony at Atlanta, Oct. 30, 1871. Ku-Klux report, Georgia, vol. ii. pp. 760, 763.

My authorities for this account of Georgia are the report of the Ku-Klux committee and the two volumes devoted to Georgia; *History of Georgia*, Avery; *Reconstruction of Georgia*, Woolley; *Life of B. H. Hill*; *Life of J. E. Brown*, Fielder; *Appletons' Annual Cyclopædia*, 1870; *The Nation*, 1870; *Why the Solid South*, Herbert, Article of Turner; Johnston and Browne; *Ten Years on a Georgia Plantation*, Leigh; *The Negro in Politics*, Bancroft, p. 69, note.

I have not deemed it necessary to go into the statistics. The student may find these in the Ku-Klux report, p. 126 *et seq.*; also in Avery and Woolley. For the members of the Ku-Klux committee, *post*.

<sup>2</sup> *Ante*; Schofield's *Forty-six Years*, p. 402.



number of civil offices so that places might be made for "carpet-baggers" and "scalawags."<sup>1</sup> But her redemption came through the conservative victory of July 1869 when Gilbert C. Walker was elected governor. It was not however until the following January that the military turned over to him and his conservative legislature the full control of civil affairs. After eight months of this rule the governor boldly declared: "In obedience to law, in the maintenance of order and the performance of all the duties appertaining to good citizenship, the people of Virginia challenge comparison with any State of the Union. Everywhere within the broad limits of the Commonwealth, every citizen is safe and secure in his life, liberty and the pursuit of happiness."<sup>2</sup> Somewhat earlier than this an observer spoke for many Northern Republicans when he wrote: "In nearly every State controlled by what calls itself the true Republican party of the South, there is a disgraceful amount of corruption and folly, and it is at the States governed by the conservative wing of the party that any American must look who does not wish to hang his head in presence of the enemies of popular government. Compare for instance the Virginia of Governor Walker with the Louisiana of Warmoth, the South Carolina of Scott or the Georgia of Bullock."<sup>3</sup>

Grant carried Virginia by a small majority in 1872; at every subsequent election she has cast her vote for the Democratic candidate for the presidency.

The reconstructed government of North Carolina with W. W. Holden as governor was inaugurated July 4, 1868. The legislature stood: Senate, Republicans 38, Democrats 12; House, Republicans 80, Democrats 40.

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<sup>1</sup> *Ante*; Why the Solid South, Article of Stiles; Dunning, p. 231, note; Appletons' Annual Cyclopædia, 1869.

<sup>2</sup> Oct. 1, 1870. Appletons' Annual Cyclopædia, 1870, p. 744.

<sup>3</sup> *The Nation*, June 2, 1870, p. 343. I shall consider Warmoth and Scott later.

Among the Republicans were 12 carpet-baggers and 19 negroes.<sup>1</sup> Holden seems to have been personally honest but he was surrounded by bad men, whose proceedings he winked at. In the palace of truth he would probably have defended his position by saying that he could not get better men to work with, and co-operation with them was essential for the good of the party or the cause. During his administration an era of corruption set in, which was an entire novelty in the old North State that previously had not on record a case of malversation in a member of the General Assembly.<sup>2</sup> The voting of the bonds of the State to aid in building railroads was the most fruitful source of corruption and no doubt can exist that a large number of the members of Holden's legislature took bribes for their support of these various enterprises. It appeared to an observer, who had the opportunity of seeing different sorts of men in North Carolina, that the dishonesty was unblushing and that a decent hypocrisy to cover the plundering of the State was entirely absent.<sup>3</sup> The negroes were of course apt pupils in the practice of corruption; and Zebulon B. Vance tells a story which, whether exact or not, illustrates a natural attitude of an inferior race raised suddenly from a low to a high estate. A negro member of the legislature was visited one night in his room and found seated at a table "laboriously counting a pile of money by the dim light of a tallow dip and chuckling to himself. 'Why what amuses you so, Uncle Cuffy?' was asked. 'Well, boss' he replied, grinning from ear to ear, 'I's been sold in my life 'leven times an' fo' de Lord dis is de fust time I eber got de money!'"<sup>4</sup>

North Carolina which had sent many eminent states-

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<sup>1</sup> Vance's figures in *Why the Solid South*, p. 78, which differ slightly from those in *Appletons' Annual Cyclopædia*, 1869.

<sup>2</sup> *History of N. C.* Moore, vol. ii. p. 329.

<sup>3</sup> I refer to my own personal observation in 1869.

<sup>4</sup> *Why the Solid South*, p. 80.

men to the national Senate and House and almost, if not quite always, men of a high sense of honour was now disgraced in the person of a carpet-bag representative, John T. Deweese, who sold a cadetship to the Naval Academy for \$500. To avoid expulsion from Congress he resigned, showing, in his final statement to the Committee on Military Affairs, the entire lack of political morality among men of his kind. He admitted making the appointment and taking the money but said, "What I did was done openly and boldly not knowing I had done a particle of wrong."<sup>1</sup> The cynical dishonesty of the carpet-bag régime is exhibited in a talk between one of its pillars and the son of a North Carolina old-line Whig. "Of all the carpet-baggers who was the worst scoundrel?" the latter asked. "Deweese," was the reply, "because he broke down the market for cadetships. We were getting from one to two thousand dollars for each cadetship. Deweese sold for five hundred."<sup>2</sup>

In one matter credit is due Holden and his legislature. Both favoured removing from the citizens of North Carolina the disabilities imposed by the Fourteenth Amendment.<sup>3</sup>

In the volume of the Ku-Klux report devoted to the North Carolina testimony will be found on the one hand stories of midnight whippings and murders by the Ku-Klux; on the other, of the burning of barns, cotton gins and dwelling houses and of rapes committed on white women by negroes. The burnings were said to have been prompted by the Loyal Leagues which were "chiefly composed of negroes and low white people."<sup>4</sup> The historian of North Carolina writes:—"The vio-

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<sup>1</sup> *Globe*, March 1, 1870, p. 1617.

<sup>2</sup> Letter to me from P. H. Winston, Feb. 13, 1902. From Deweese's statement it would appear that this form of corruption was common.

<sup>3</sup> Appletons' Annual Cyclopædia, 1869, p. 493.

<sup>4</sup> pp. 53, 63, 167, 246, 250, 269, 339, 345.

lence of the League gave birth to the Ku-Klux who were more sinned against than sinning. Unnumbered falsehoods exaggerated their misdeeds and invented offences of which they were innocent.”<sup>1</sup>

But Albion W. Tourgee, who was a judge of the Superior Court of North Carolina from 1868–1875 thus describes the “new Reign of Terror”: “Of the slain there were enough to furnish forth a battle-field and all from those three classes, the negro, the scalawag and the carpet-bagger — all killed with deliberation, overwhelmed by numbers, roused from slumber at the murk midnight, in the hall of public assembly, upon the river-brink, on the lonely woods-road in simulation of the public execution, — shot, stabbed, hanged, drowned, mutilated beyond description, tortured beyond conception. And almost always by an unknown hand! Only the terrible mysterious fact of death was certain. . . . And then the wounded, the whipped, the mangled, the bleeding, the torn! men despoiled of manhood! women gravid with dead children! bleeding backs! broken limbs! Ah! the wounded in this silent warfare were more thousands than those who groaned upon the slopes of Gettysburg.”<sup>2</sup>

That North Carolina furnished nothing like her *pro-rata* of any such number of outrages is shown from the

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<sup>1</sup> Moore, p. 327.

<sup>2</sup> A Fool's Errand, p. 226. Perhaps I ought to consider this as the most fictitious part of this fiction and not cite it in history but, as it is from a chapter of reflections, in the midst of the story, and purports to be based on the thirteen volumes of testimony and conclusions of the Ku-Klux report and refers therefore to all the Southern States, I quote it as an exaggerated and uncritical deduction from the evidence. I wish however to do full justice to the witness. Moore writes of him: “Tourgee is a learned and laborious jurist and possesses literary gifts of a high order. His judicial career, in spite of abundant criticism, redounded to his credit and his greatest fault is disregard for the honest prejudices of the good people among whom he saw fit to cast his fortunes,” p. 324. But Moore is not always consistent. See pp. 322, note, 339. Tourgee was appointed Consul to Bordeaux in 1897 and Consul-general to Halifax in 1903.



course of events in 1870. Holden whose interest lay in exaggeration of them could only specify three in Alamance county when he issued a proclamation [March 7] declaring that county in a state of insurrection: one was a beating, another a hanging, a third was a threat compelling a postmaster to flee from his home. Later a Republican senator from Caswell County was murdered in the daytime in the Court-House at Yanceyville, and this being undoubtedly a Ku-Klux outrage, Holden saw fit to declare Caswell County, as well, in a state of insurrection [July 8]. A week later he sent to these counties 350 "resolute men" of his militia, who had been recruited in the mountains of Western North Carolina and East Tennessee and had won under the command of Colonel Kirk, a name for hardy determination. Kirk arrested and detained about a hundred citizens, many of whom were of good standing, and as the law under which he and the governor were acting was a stringent force act, it was feared that these citizens might suffer death on the judgment of drum-head courts martial. "Sir," said Thurman in the Senate, "it marks a black passage in English history when that body of murderers called Kirk's lambs [Kirke] rioted in the blood of Englishmen. There was not a man acquainted with English history who did not have the parallel called to his mind when he read the atrocities of this Kirk of North Carolina."<sup>1</sup> Relief was sought from the North Carolina Supreme Court but this was denied. Application was then made to the judge of the United States District Court, who, relying on the Fourteenth Amendment and a statute of February 5, 1867, designed to protect the freedmen, issued a writ of habeas corpus requiring Kirk to bring the prisoners before him. Meanwhile Holden had appealed to President Grant for authority to use the Federal troops in the State and had also

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<sup>1</sup> Jan. 18, 1871. *Globe*, p. 578.

asked him to send an additional regiment; both requests were granted. But the action of the United States judge had made it possible for the marshal to call upon the Federal soldiers to execute the order of the Court, hence Holden made a frantic appeal to the President to stand by him and allow him to detain the prisoners. The President turned the affair over to his Attorney-General, Akerman, who endorsed the action of the United States judge. Somewhat later the prisoners were brought before the judge who discharged them from Kirk's "unlawful custody" <sup>1</sup> [August 23].

Holden's action was a desperate attempt to retain political power since a new legislature was to be chosen in August but it proved a boomerang as it nerved the Democrats to a supreme effort. A further incentive lay in the odious fact that the governor had in his militia besides Kirk's mountaineers one hundred coloured troops. Raleigh was garrisoned by negro soldiers and the people of North Carolina chafed at the thought. While the legal proceedings were pending, the election took place [August 4]. The Democrats carried the State by 4000 majority,<sup>2</sup> elected five out of seven Congressmen, and obtained a considerable preponderance in the legislature. The Senate stood 33 Democrats to 17 Republicans, the House 76:44. The magical effect of this Democratic victory may be told in Holden's own words. In revoking his proclamations declaring the two counties in a state of insurrection he said [November 10], "I take this occasion to express my gratification at the peace and good order now prevailing in the Counties of Alamance and Caswell and generally throughout the State."<sup>3</sup>

It was indeed a victory of righteousness. Under the

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<sup>1</sup> History of North Carolina, Moore; Appletons' Annual Cyclopædia, 1870.

<sup>2</sup> A governor was not chosen.

<sup>3</sup> Appletons' Annual Cyclopædia, 1870; Moore.

Holden-carpet-bag régime the debt of the State increased from \$16,000,000 to \$32,000,000 which was nearly twenty-five per cent. of the assessed value of taxable property. Ten millions more in railroad aid bonds would undoubtedly have been added had the same party continued in power.<sup>1</sup> It was consistent with the character of the régime that despite the lavish expenditure there was little money for the schools.

Congressional reconstruction had built up a corrupt party which deserved to be overthrown; any observer who had an opportunity to contrast the constituents of the two parties could not fail to see that the cause of good government had won.<sup>2</sup> In North Carolina as well as in Georgia the Republicans had thrown away an opportunity to construct a respectable party of their own out of the old-line-Whigs and Union-men-before-the-war who had numbers as well as ability. Even as it was, there were native Republicans of character and standing and some of the Northern men who obtained office were worthy, but these were overborne by the crowd who were in politics for plunder.<sup>3</sup>

With the redemption of the State came retribution. Holden was impeached by the House of Representatives, not for corruption, but for his action touching Alamance and Caswell counties, was found guilty by the Senate [March 22, 1871] and removed from office.<sup>4</sup>

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<sup>1</sup> Statement of Kemp P. Battle in minority report of Ku-Klux Committee, p. 378.

<sup>2</sup> In June and July 1869 I passed nearly a month in North Carolina. I met Governor Holden, Deweese, Judge Settle and one or two more of the judges of the Supreme Court, a number of gentlemen and planters, who were Democrats, many poor whites, one or two scalawags, and a Scotchman, who had been in North Carolina, during the war and reconstruction, in charge of some coal mines belonging to British subjects.

<sup>3</sup> Besides the authorities referred to I have been helped by a number of private letters [1902, 1903] from P. H. Winston a native of North Carolina.

<sup>4</sup> Moore; Appletons' Annual Cyclopædia, 1870, 1871; Life of Holden, Boyd; New York *Tribune*, March 23, 1871.

Vance was elected senator by the Democratic legislature but, on account of his disabilities, was not permitted to take his seat and in January 1872 he resigned. Of the seven representatives, the two Republicans and four of the Democrats were at once admitted to the House; the fifth Democrat laboured under disabilities and his seat was also contested; he was not sworn in until May 1872.<sup>1</sup>

North Carolina gave Grant nearly 15,000 majority in 1872 since when she has steadily cast her electoral vote for the Democratic candidates for the presidency.

When Congress assembled in December 1870, this was the condition of four of the late Confederate States: Tennessee which since 1866 had possessed autonomy had been reclaimed from the Radicals by the Democrats. Ever afterwards she voted for the Democratic candidates for the presidency. Virginia passed directly from military control to conservative home rule. The governments of North Carolina and Georgia had been wrested by their intelligent people from the carpet-bag-negro domination.

The Southern question again engaged the attention of Congress, and as usual two distinct attitudes on the part of the dominant party are noticeable — that of the politician exasperated to see the Southern States escaping from Republican control and that of larger-minded men who were sorry and angry, not so much at the result, as because they believed it had been secured by outrages on negroes and white Republicans. It was rumoured that the entire South would again be placed under martial law<sup>2</sup> but, if such a plan was considered seriously, it was soon dropped because Congress had

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<sup>1</sup> *Globe*, March 1871, pp. 11, 12, 133, 832; March, April, May, June, 1872, pp. 1608, 1609, 2715, 3783, 3870, 4399, 4400, 4457, 4492.

<sup>2</sup> Thomas F. Bayard, Senate, Jan. 18, 1871, *Globe*, p. 575.



little relish for military rule and because such action would be an open confession that their reconstruction policy was a failure. But the session exemplified the truths, that legislation begun against natural laws is apt to be followed up by more of the same kind in the futile attempt of man to hasten Nature's patient ways and that one force bill directed against a community, accustomed to liberty, has to be strengthened by another to fasten the yoke of tyranny. The Act of February 28, 1871 was declared to be amendatory of the law approved May 31, 1870, and was entitled, "An Act to enforce the rights of citizens of the United States to vote in the several States of this Union." It placed the elections for members of Congress under Federal control. A host of supervisors were to be appointed by the judges of the United States courts who should see that the voting was fair and the count honest. The United States marshals were empowered to appoint large numbers of deputies to prevent any interference with the right of voting and anyone of them might if necessary summon the posse comitatus of his district to aid in the enforcement of the law. While the Act applied to all the States, it was especially directed at the South and its intent was to protect the negroes when they came forward to cast their ballots. It had reference to elections for members of Congress only but, as the State elections generally took place on the same day, the protecting arm of the United States government was placed around the freedmen who desired to vote for Republican governors and members of the legislature.

By virtue of the Act of January 22, 1867, passed when Johnson was being so closely watched, the Forty-second Congress met on March 4, 1871 and nineteen days later heard this special message from President Grant: "A condition of affairs now exists in some of the States of the Union rendering life and property insecure and the carrying of the mails and the collection of the revenue

dangerous. The proof that such a condition of affairs exists in some localities is now before the Senate, [through the report of a special committee]. That the power to correct these evils is beyond the control of the State authorities I do not doubt; that the power of the Executive of the United States, acting within the limits of existing laws, is sufficient for present emergencies is not clear. Therefore I urgently recommend such legislation as in the judgment of Congress shall effectually secure life, liberty and property and the enforcement of law in all parts of the United States." The subject had been so much discussed and feeling ran so high that Congress was ripe for action and responded promptly to the request of the President passing the law of April 20, 1871 "to enforce the provisions of the Fourteenth Amendment," commonly known as the Ku-Klux Act. It was directed against the Ku-Klux outrages and conferred upon the President great powers towards their suppression.

The debate in the Senate on this project of law was an earnest discussion between able men. Morton, who may be said to have been the Republican leader of the Senate and was effective in holding his forces together, stated the question, "Shall reconstruction be maintained; shall the constitutional amendments be upheld; shall the colored people be protected in the enjoyment of equal rights; shall the Republicans of the Southern States be protected in life, liberty and property? are the great issues to be settled in 1872."<sup>1</sup> Thurman, the ablest Democrat in the Senate, admitted the existence of the outrages and thought that an end should be put to them but argued that the proposed bill was unconstitutional; it clothed the President with despotic power; it was based on an interpretation of the Fourteenth Amendment which blotted out the State governments entirely

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<sup>1</sup> April 4, 1871, *Globe Appendix*, p. 254.

and would lead to "a consolidated centralized government."<sup>1</sup> Senator Sherman, who inclined to moderation in statement, said that the Ku-Klux-Klan was "a disciplined band, armed, equipped, disguised, mainly composed of soldiers of the rebel army."<sup>2</sup> General Sherman, (to interpolate an authority outside of Congress) who was never swayed by political considerations, referred to the Ku-Klux operations as "these disgraceful acts."<sup>3</sup> Senator Morrill of Vermont, a moderate man, had declared at the previous session that these crimes and murders were frequent and, replying to a common Democratic charge, said he did not believe the Republican party desired "to make any capital out of these outrages."<sup>4</sup> What we want to do, said Henry Wilson, is to "put down the Ku-Klux organizations which are the legitimate descendants of the old legalized patrol system that once existed in the South now carried on without law. Crimes are committed under it that are shocking and appalling."<sup>5</sup> Joshua Hill of Georgia maintained that in his State the outrages were "limited in their extent" being "confined to a few counties."<sup>6</sup> In general the Democrats maintained that the reports of the outrages were exaggerated and that the belief in them rested largely on hearsay evidence, while the Republicans declared that the half was not told. Opinions being so directly opposed, the speech of Carl Schurz possesses an unusual interest. He was called a "liberal Republican" and was making ready to head the bolting movement from the Republican Party of the following year; having points of contact with both parties

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<sup>1</sup> Ibid., pp. 221, 223; Appletons' Annual Cyclopædia, 1871, p. 175.

<sup>2</sup> March 18, 1871, *Globe*, p. 153.

<sup>3</sup> March 21, 1871, Sherman Letters, p. 330.

<sup>4</sup> Jan. 18, 1871, *Globe*, p. 573.

<sup>5</sup> Ibid., p. 570. On the connection between the Ku-Klux and the patrol system see W. G. Brown, *Atlantic Monthly*, May 1901, p. 634.

<sup>6</sup> Appletons' Annual Cyclopædia, 1871, p. 183.

he inclined to look on both sides. He believed that the Ku-Klux operations "mainly directed against Republicans and the colored people" had "attained considerable dimensions"; but these disorders were not due to the Reconstruction Acts of Congress. Outrages began immediately after the close of the war and were indeed more extensive in 1865 than now, as he could testify from his own experience at the South when sent thither by President Johnson. The success of negro suffrage, he confessed, had not been "as complete as might be desired"; nevertheless he thought Congress had done right in giving "the colored people the ballot." The "honest men" of the South by their recalcitrant and unsympathetic action had driven the coloured voters into the arms of greedy adventurers. But touching the Ku-Klux outrages, "as there are many diseases which it is impossible to cure by medicines" so "there are many social disorders which it is very difficult to cure by laws." He would have liked to support the majority of the Committee on the Judiciary who fathered the bill but he showed plainly why he could not. I agree with those Senators, he said, "who see in several provisions of this bill an encroachment of the national authority upon the legitimate sphere of local self-government not warranted by the Constitution of this Republic. To give such provisions my vote would not only go against my convictions of constitutional law but also of sound policy."<sup>1</sup>

The Senate Committee on the Judiciary was a strong body. Of the seven who composed it, five were excellent lawyers, Trumbull (the chairman), Edmunds, Conkling, Carpenter and Thurman. As one surveys in retrospect the able men of the legal profession who have

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<sup>1</sup> April 14, 1871, *Globe*, p. 686. For Schurz's report on the condition of the South in 1865 see vol. v. p. 552. Schurz's opinion that conditions were worse in 1865 than in 1870 was not general; and it is not the view and impression which I derive from the evidence.



adorned the Senate, one would hesitate to affirm that, excepting Webster, Calhoun and Fessenden, greater adepts in constitutional law have argued in that arena of debate than Trumbull, Edmunds and Thurman. Trumbull and Thurman opposed the Ku-Klux bill. Edmunds reported it from the Judiciary Committee and in closing the debate made a powerful legal argument in its support;<sup>1</sup> and he had at his back his colleagues Conkling and Carpenter.

Eleven years later the United States Supreme Court decided in favour of Trumbull and Thurman. Trumbull, in his remarks against the bill, anticipated the line of argument of the Court. "I am not willing," he said, "to undertake to enter the States for the purpose of punishing individual offences against their authority committed by one citizen against another. We in my judgment have no constitutional authority to do that. When this government was formed, the general rights of person and property were left to be protected by the States, and there they are left to-day. Whenever the rights that are conferred by the Constitution of the United States on the Federal government are infringed upon by the States, we should afford a remedy."<sup>2</sup>

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<sup>1</sup> April 14, 1871, *Globe*, p. 691.

<sup>2</sup> April 11, *ibid.*, p. 578. On the decision of the Supreme Court in 1882 see Dunning, *Atlantic Monthly*, Oct. 1901, p. 442. The case is *U.S. vs. Harris*, 106 U.S. 629. Justice Woods delivered the opinion: "It is perfectly clear," he said, "from the language of the first section [of the Fourteenth Amendment] that its purpose . . . was to place a restraint upon the action of the States." (p. 638, refers to *U.S. vs. Cruikshank*, 1875, 92 U. S. 542.) "Nor does the Thirteenth Amendment warrant the enactment of section 5519 of the Revised Statutes." (p. 640. This is section 2, the conspiracy section of the Ku-Klux Act, the gist of the act.) "The second section of Article IV [of the Constitution] like the Fourteenth Amendment is directed against State action." (p. 643.) "We have therefore been unable to find any constitutional authority for the enactment of section 5519 of the Revised Statutes." (p. 644.)

In the House Kerr of Indiana argued that the bill was unconstitutional and Beck opposed to it the opinion of the Supreme Court in the *Milligan* case. Appletons' *Annual Cyclopædia*, 1871, pp. 192, 198.

Before the Ku-Klux bill passed, the President had by proclamation called attention to an especial state of turbulence which existed in South Carolina;<sup>1</sup> and thirteen days after its enactment, he issued a general note of warning to the South<sup>2</sup> but, in only one instance, did he employ the extraordinary powers conferred upon him by the Act.<sup>3</sup> Believing that "a condition of lawlessness and terror existed" he recited in a proclamation of October 12, 1871 that combinations and conspiracies obstructed the execution of the laws in nine counties of South Carolina<sup>4</sup> and he therefore commanded the persons composing the unlawful combinations to disperse.<sup>5</sup> Five days later, stating that the "insurgents" had not dispersed and that they were in "rebellion" against the United States, he by virtue of the Constitution and the Ku-Klux Act suspended the privileges of the writ of *habeas corpus* within those nine counties.<sup>6</sup> Many persons in South Carolina were arrested and some were prosecuted and punished; bills were found by grand juries against offenders in other States and convictions were obtained.<sup>7</sup> This action produced an effect, for as

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<sup>1</sup> March 24, 1871, Richardson, p. 132.

<sup>2</sup> May 3, *ibid.*, p. 134.

<sup>3</sup> Dunning, *Atlantic Monthly*, Oct. 1901, p. 440.

<sup>4</sup> These were named.

<sup>5</sup> Richardson, pp. 135, 163.

<sup>6</sup> *Ibid.*, p. 136. Later Marion County was excepted from the operation of the proclamation.

<sup>7</sup> I give a table prepared for me by D. M. Matteson from the annual reports of the Attorney-General beginning with that for 1870. The report for 1871 had no table, the data of that year is in the report for 1872. No returns are here given for any except the former slave-holding States; there were no cases in Missouri. There were a number of indictments in the Northern States; the totals are for the whole country. For the years 1875-1880 the cases were almost entirely in the South. N.B. The date changes from calendar to fiscal year, so that the table for the year ending June 30, 1873, includes cases given in the figures of the year ending Dec. 31, 1872.

It is not possible to distinguish under what particular sections of the Enforcement Acts the various arrests, trials, etc. were made. They are all lumped in the tables. It is evident that during 1871-1873 most of the cases were Ku-Klux and it is also probable that after that time most of the cases were election cases.

INDICTMENTS, TRIALS, ETC., UNDER ENFORCEMENT ACTS OF MAY 31, 1870, APRIL 20, 1871, AND JUNE 10, 1872

	YEAR ENDING DECEMBER 31, 1870				YEAR ENDING DECEMBER 31, 1871				YEAR ENDING DECEMBER 31, 1872				YEAR ENDING JUNE 30, 1873				YEAR ENDING JUNE 30, 1874			
	Cases pending end of year	Convictions	Acquittals	Nolle pros., quashed, etc.	Cases still pending	Convictions	Acquittals	Nolle pros., etc.	Cases still pending	Convictions	Acquittals	Nolle pros., etc.	Cases still pending	Convictions	Acquittals	Nolle pros., etc.	Cases still pending	Convictions	Acquittals	Nolle pros., etc.
Alabama . . . . .					35				16				69	5	1	6	34		1	
Arkansas . . . . .					1				2				2			2	8			
Delaware . . . . .					3				8	1			8			8	6			
Florida . . . . .					14		1	2					15			6	32		4	
Georgia . . . . .					31				1				1			42				
Kentucky . . . . .	15	15	5	4	3				1				1			11				
Louisiana . . . . .							1						5			5				
Maryland . . . . .					3								4			4				
Mississippi . . . . .					68				385	356	41	93	307	184	50	34	34	171	57	2
North Carolina . . . . .	5				102	49	6	10	115	1	1	1	862	263	6	34	6	35	37	26
South Carolina . . . . .					278	54	38	20	1207	86	2	8	617	14	4	536	40	3	2	144
Tennessee . . . . .					264	9		48	22		2	203	22		2	105	26	3		555
Texas . . . . .	190	2			6				3				1		2	4	6			6
Virginia . . . . .					7	4		4					6							
West Virginia . . . . .								24									3		2	
Total for United States	271	32	5	6	879	128	46	140	1890	456	49	351	1960	469	68	767	366	102	92	772

## TOTALS FOR UNITED STATES

	YEAR ENDING JUNE 30, 1875	YEAR ENDING JUNE 30, 1876	YEAR ENDING JUNE 30, 1877	YEAR ENDING JUNE 30, 1878	YEAR ENDING JUNE 30, 1879	YEAR ENDING JUNE 30, 1880
Cases still pending . . . . .	299	142	305 <sup>1</sup>	56	297	269
Convictions . . . . .	18	3	38	6	40	1 <sup>2</sup>
Acquittals . . . . .	16	5	11	20	30	2
Nolle pros., etc. . . . .	200	114	185		76	67

<sup>1</sup> 195 in South Carolina.<sup>2</sup> This was in Nevada.

early as February 19, 1872, there was according to the Republican members of the Ku-Klux committee an "apparent cessation" of Ku-Klux operations. On the following December 2, Grant said in his annual message that the disorders had been largely repressed and in his inaugural address on March 4, 1873 he declared, "The States lately at war with the General Government are now happily rehabilitated and no Executive control is exercised in any one of them that would not be exercised in any other State under like circumstances."<sup>1</sup> Unfortunately such did not continue to be the case during the whole of his second term.

After 1872 the outrages of the Ku-Klux-Klan proper, for the most part, ceased.<sup>2</sup> The actual execution

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<sup>1</sup> Richardson, pp. 151, 199, 221 ; Ku-Klux report, p. 99.

<sup>2</sup> Brown, *Atlantic Monthly*, May 1901, p. 643 ; Dunning, *ibid.*, Oct. p. 440.

D. M. Matteson furnishes me this endorsement of Brown and Dunning :—

I think that the Ku-Klux-Klan outrages virtually ceased in 1872. There was evidently a slight recrudescence of them in Tennessee in Aug. 1874, according to the report of the United States attorney for West Tennessee, as given in H.E.D. 43d Cong. 2d Sess., No. 12 ; but in this the negroes seem to have been counteractive. In North Carolina in 1872 the arrests were for earlier conspiracies, except in three instances ; in Mississippi things were quiet and peaceable at the end of 1872. (Note *ante*.) It is also significant that the Attorney-General did not think it necessary to remark upon the enforcement acts after 1872 in his reports. There was something said in Alabama in 1874 about the White League as a successor of the Ku-Klux-Klan, but while such an organization existed, there was little actual violence (see Fleming, *Civil War and Reconstruction in Alabama*, pp. 708, 791, 795) ; and moreover there was no reference to disguises during the reported troubles at that time, so far as I found. A report by Major Lewis Merrill, who commanded the troops in the martial law counties in South Carolina in 1871, 1872, speaks of the unfavorable condition of public sentiment there at the end of 1872, and of the error in his opinion in Jan. 1872, when he wrote that "before long . . . public opinion would supersede the necessity for the interposition of the military forces of the national Government." His argument was to show that "the moral effect of their [military] presence [was] absolutely essential to any approximation to good order and observances of or enforcement of law." But he further said, in reference to his earlier opinion, that "it was reasonable to expect that the severe lesson to be learned from the sudden collapse of the organization, and the flight or arrest of the leading men, would have had a wholesome effect in silencing bad counsel." I judge from this, that he considered active Ku-Kluxing to be over, but merely



of the Ku-Klux Act, together with the moral effect of it was probably the most important cause contributing to their suppression; and the triumphant re-election of Grant in 1872, signalling that the laws against the South would be rigidly enforced, tended to tranquillity. Moreover peace and quiet reigned in the four States which had been redeemed from radical rule; and redemption of the other seven proceeded by a somewhat different method from that in vogue previous to 1872.

Before we turn from the Ku-Klux-Klan, it will be well to take a look at its history as written in the majority and minority reports of the Ku-Klux committee. This was a joint committee authorized by resolution of Congress April 7, 1871 and consisted of seven senators and fourteen representatives, whose duty it was "to inquire into the condition of affairs in the late insurrectionary States." Their reports were made to Congress on February 19, 1872 and fill one volume accompanied by twelve volumes of testimony. The majority report submitted by Senator John Scott of Pennsylvania and signed by 13 Republicans<sup>1</sup> embodies, what may certainly be called, an extreme indictment. The Ku-Klux, they said "in 1870 and 1871 rode into

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because the presence of the soldiers prevented any renewal of it. At any rate it was over. (This report is dated Yorkville, S.C., Sept. 23, 1872. It is in H.E.D. 42d Cong. 3d Sess., No. 1, part. ii. vol. i. pp. 85-91.) McDowell, testifying before a committee at Washington in Jan. 1874, said he did not think that there was any general feeling of apprehension of disturbances by the Ku-Klux-Klan in South Carolina. (This is in Report of Secretary of War for 1874, vol. i. p. 52.) There is, I fear, little to be learned on the question from the table of cases, note *ante*; still there is some significance in the fact that while at the end of 1872 there were 1207 cases pending in South Carolina, there were only 617 pending by July, 1873, and that in 1873 and 1874, a nolle prosequi was entered in 1091 cases. In North Carolina and Mississippi it is not so easy to judge from the table. Finally the general lack of reference to the Ku-Klux-Klan in Congressional Documents, and I think also in newspapers, after 1872 is significant.

<sup>1</sup> Senators, John Scott, Z. Chandler, B. F. Rice, J. Pool, D. D. Pratt; Representatives, L. P. Poland, H. Maynard, G. W. Scofield, J. F. Farnsworth, J. Coburn, J. E. Stevenson, B. F. Butler, W. E. Lansing.

Eutaw, Alabama and murdered Boyd for seeking to punish by law the murders of colored men. It pursued the ministers of the Methodist Episcopal Church in that State because of their loyalty. In North Carolina it hung Wyatt Outlaw, for no other offence than opposition to the Ku-Klux and barbarously whipped Mr. Justice for exercising his political rights. In South Carolina it tortured Elias Hill for preaching the gospel to his race, for educating their children, for leading them in their political and business life. It assembled in force armed and disguised to prevent the execution of a writ of *habeas corpus* in Union County, issued to secure ten negroes charged with murder for lawful trial, and hanged them without trial. In Mississippi it destroyed schoolhouses and drove away school-teachers. In Georgia, and indeed in all the States examined into, it committed murders, whippings" and numerous and horrible outrages.<sup>1</sup> The Ku-Klux outrages, so the majority of the committee affirmed, began before the Reconstruction Acts of Congress but they were intensified by the imposition of negro suffrage; and the Ku-Klux-Klan had now "become a political organization whose purpose is to put the democratic party up and the radical party down." It is true, they admitted, that the conduct of many of the State governments established by the Republicans and the negroes was bad but that was due to the neglect by "a large portion of the wealthy and educated men" of "their duties as citizens." These might have laboured with and influenced the

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<sup>1</sup> p. 83. In a riot at Laurens, S.C. Oct. 20, 1870 seven to thirteen persons were killed, all Republicans, p. 30. In one district in Alabama "there were six churches burned by the incendiaries, four of them within three weeks preceding the Congressional election in 1870. Many schoolhouses were burned through northern Alabama and marked hostility was shown to the school-teachers, especially in opposition to those who taught colored schools." (p. 72.) "In April and May 1871 a number of the teachers of the colored schools [in Alabama] were called upon by the Ku-Klux and warned that if they did not stop teaching they would be 'dealt with.'" (p. 74.)

negroes but their refusal to do this left the new voters to be swayed by others with the result that a number of the legislatures were composed of ignorant but honest negroes and educated but knavish white men. Hence venality and corruption prevailed.<sup>1</sup>

The minority report was presented by Representative James B. Beck of Kentucky and signed by the eight Democratic members of the Committee.<sup>2</sup> "We regard it an unqualified admission on the part of the majority of the Committee," they said, "that there are no disorders, no outrages on the part of the people in Virginia, Tennessee, Arkansas, Texas and Louisiana" because the Republicans on the committee decided by a party vote not to take testimony in those states.<sup>3</sup> Regarding the other six States, North and South Carolina, Georgia, Alabama, Mississippi and Florida, having a total number of counties exceeding 420, "we do not fear successful contradiction," the Democrats asserted, "when we say that there never was a disguised band in one-tenth part of them, or in over 40 of these 420 counties"; the depredations were committed "simply in a county here or there, or at most in one or two counties together in several of these States." "While we do not intend to deny," they said, "that bodies of disguised men have, in several of the States of the South, been guilty of the most flagrant crimes, crimes which we neither seek to palliate nor excuse, for the commission of which the wrong-doers should, when ascertained and duly convicted, suffer speedy and condign punishment, we deny that these men have any general organization, or any political significance, or that their conduct is endorsed by any respectable number of the white people in any State."

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<sup>1</sup> Report, pp. 82, 85, 86, 87.

<sup>2</sup> F. P. Blair, T. F. Bayard, S. S. Cox, J. B. Beck, P. Van Trump, A. M. Waddell, J. C. Robinson, I. M. Hanks.

<sup>3</sup> The action of the Committee is correctly stated. The inference is not sound although it was a clever argumentative point.

Naturally the grievances of the Southern people bulked large in the Democratic eye. "We think no man can look over the testimony taken by this committee," the Democrats declared, "without coming to the conclusion that no people had ever been so mercilessly robbed and plundered, so wantonly and causelessly humiliated and degraded, so recklessly exposed to the rapacity and lust of the ignorant and vicious portion of their own community and of the other States, as the people of the South have been for the last six years. History, till now, gives no account of a conqueror so cruel as to place his vanquished foes under the dominion of their former slaves. . . . To-day in South Carolina, Texas and Arkansas (and in 1866-1868 it was so in Tennessee and elsewhere) the emancipated slave regiments parade in State or Federal uniform armed cap-a-pie with the most approved weapons, . . . while the white men are denied the right to bear arms or to organize, even as militia, for the protection of their homes, their property or the persons of their wives and their children." Under such provocations many of the Southern people "took the law into their own hands and did deeds of violence which we neither justify nor excuse."<sup>1</sup>

Neither of these reports is candid; both are partisan; but the minority report comes nearer to the truth. At many points the Republican document halts and boggles and since a defence of the carpet-bag-negro governments is a part of the case, consciousness of a bad cause may be read between the lines; attempts to rise above this often call for juggling of facts, undue emphasis, unworthy suppression. While the Democrats attempt to prove too much, strain at effect and indulge in vehement rhetoric, they are straightforward and aggressive with the consciousness of a cause based on the eternal

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<sup>1</sup> Report, pp. 291, 292, 439, 440. An interesting description of twenty-four convicted Ku-Klux prisoners, arriving at New York on their way to the Albany penitentiary, taken from the *New York Times*, is printed on p. 514.



principles of nature and justice. The Republicans began the attack but they were soon thrown upon the defensive. The keystone of their policy of reconstruction was universal negro suffrage at the South, and this had resulted in the worst government ever known in the United States. They could not ignore all the evil; some they palliated; they lamely reasoned venality and corruption into relations with any but the prime and salient cause. The Democrats, on the other hand, holding comfortably to the truth, asserted that the best Southern people disapproved of the Ku-Klux outrages; they showed these operations to have been sporadic and they offered no apology for violence. This gave them firm ground from which to charge home to the Republicans the gross misgovernment resulting from their policy and administration.<sup>1</sup>

The first removals of disabilities imposed by the Fourteenth Amendment were in the interest of the Republican party at the South<sup>2</sup> but, as time wore on, Congress became more liberal and ceased to make such a discrimination. The Forty-first Congress [ending March 4, 1871] extended amnesty to 3185, the sentiment being that it should be granted to whomsoever should ask for it in good faith, "except it may be to the principal authors of the rebellion, the chief criminals."<sup>3</sup> Many Southerners were too proud to petition for the removal of their disabilities: Alcorn, Republican Senator from Mississippi, declared that he would never have asked for it.<sup>4</sup> His and other cases were looked after by their friends but the feeling grew that instead of acts specifically naming persons, some general rule should be estab-

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<sup>1</sup> For a studious and well-informed view of the Ku-Klux-Klan, see *Fleming*, p. 660 *et seq.*

<sup>2</sup> During the Fortieth Congress the disabilities removed were 1431.

<sup>3</sup> Morton, Jan. 23, 1872, *Globe*, p. 522; Blaine, vol. ii. p. 512; *Index U.S. Statutes at Large*.

<sup>4</sup> Dec. 20, 1871, *Globe*, p. 246.

lished and a bill with that end in view passed the House April 10, 1871 but failed in the Senate.<sup>1</sup> Now the Republicans were losing ground in the country. By the elections of 1870 they had lost the two-thirds majority in the House which had been theirs since their first grapple with Johnson in 1866. In 1871 a split in the party began which by January 1872 bid fair to result in an organized movement to contest the presidential election; and one potent cause of this was dissatisfaction with the general policy pursued towards the South, although negro suffrage of course was looked upon as an accomplished fact. This pressure of opinion was reflected in Grant's annual message of December 4, 1871 when he suggested the removal of the disabilities imposed by the Fourteenth Amendment; but he went on to say that if they were "any great criminals" they might "be excluded from such an amnesty."<sup>2</sup> In December [1871] the Senate began the consideration of the bill which had passed the House at the previous session and which Thurman described as one of "almost universal amnesty." It would undoubtedly have passed speedily had not Sumner thrown confusion into the ranks of the amnesty supporters by insisting upon his supplementary Civil Rights bill as an amendment.<sup>3</sup> Trumbull appealed to Sumner not to press it. "Let us stay here," he said December 20, 1871, "let us sacrifice one long session and the whole night, if need be, to the passage of a bill [the Amnesty bill] which will do more in my judgment to restore harmony throughout the country and bring about a good feeling among the people in all the sections of the land than any other measure

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<sup>1</sup> Blaine, vol. ii. p. 512; *Globe*, p. 561.

<sup>2</sup> Richardson, p. 153.

<sup>3</sup> Pierce (vol. iv. p. 499) summarizes this "a measure securing equality of civil rights to the colored people and prohibiting discriminations against them by common carriers of passengers, by proprietors of theatres and inns, managers of schools, of cemeteries and of churches or as to service as jurors in any courts, State or national."

which we have had before us.”<sup>1</sup> Alcorn, in the name of the coloured people of Mississippi, begged Sumner not to hazard the Amnesty bill by insisting on his amendment, and Joshua Hill, a Republican senator from Georgia, opposed it, but Sumner was obdurate and the matter went over until after the holidays.

In January [1872] when the consideration of the subject was resumed Sumner still insisted on his amendment. Thurman, Carpenter and Morrill of Maine told him that his bill was unconstitutional but to these admonitions he made this reply: “I insist that the Constitution must be interpreted by the Declaration of Independence. I insist that the Declaration is of equal and co-ordinate authority with the Constitution itself. . . . Every word in the Constitution must be interpreted so that Liberty and Equality shall not fail.”<sup>2</sup> While in favour of Amnesty, Sumner was more eager for the extension of Civil Rights to the negroes, and at the risk of defeating both measures he persisted in coupling them together. The Amnesty required a two-thirds vote, the Civil Rights only a majority but he seemed to think the Democrats would vote for his pet measure in order to secure the removal of disabilities from their Southern friends. In this he was wrong. The vote on his amendment was a tie and was only adopted by the casting vote of Vice-President Colfax.<sup>3</sup> The twin measure required two-thirds which it failed to secure.<sup>4</sup>

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<sup>1</sup> *Globe*, p. 246.

<sup>2</sup> Sumner's Works, vol. xiv. p. 425.

<sup>3</sup> Carpenter, Morrill of Maine, Schurz, Trumbull and other Republicans five of whom were from the Southern States voted with the Democrats against it; Conkling, Morton and Sherman for it. Edmunds thought the Civil Rights bill constitutional and would undoubtedly have voted for it had he been present.

<sup>4</sup> The vote was 33:19. Morrill of Maine and Trumbull voted with the Democrats. Carpenter and Schurz were absent. Besides the *Globe* I have been helped in this account by Sumner's Works, vol. xiv.; Pierce's Sumner, vol. iv.; Blaine, vol. ii.; Foulke's Morton, vol. ii.

The amnesty question slumbered until May when [May 8, 9] another bill removing disabilities which had passed the House was considered by the Senate but Sumner succeeded in tacking his Civil Rights amendment to it which again caused the failure of the project. On May 13 Benjamin F. Butler reported from the House Committee on the Judiciary an Amnesty bill

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Schurz favoured universal amnesty and I give copious extracts from his speech as he furnished a correct description of affairs at the South stating fairly the causes of "this distressing condition." Moreover he presented the view of the Liberal Republicans of 1872 and made a clever apology for the Congressional policy of negro suffrage. "Look at the Southern States as they stand before us to-day," he said. "Some are in a condition bordering upon anarchy, not only on account of the social disorders which are occurring there or the inefficiency of their local governments in securing the enforcement of the laws; but you will find in many of them fearful corruption pervading the whole political organization; a combination of rascality and ignorance wielding official power; their finances deranged by profligate practices; their credit ruined; bankruptcy staring them in the face; their industries staggering under a fearful load of taxation; their property-holders and capitalists paralyzed by a feeling of insecurity and distrust almost amounting to despair. Sir, let us not try to disguise these facts, for the world knows them to be so and knows it but too well. . . . What happened in the South? It is a well-known fact that the more intelligent classes of Southern society almost uniformly identified themselves with the rebellion; and by our system of political disabilities just those classes were excluded from the management of political affairs. . . . The controlling power in those States rested in a great measure in the hands of these who had but recently been slaves and just emerged from that condition, and in the hands of others who had sometimes honestly, sometimes by crooked means and for sinister purposes found a way to their confidence. . . . The stubborn fact remains that the negroes *were* ignorant and inexperienced; that the public business was an unknown world to them and that in spite of the best intentions they *were* easily misled, not unfrequently by the most reckless rascality. . . . Their political rights and privileges were undoubtedly well calculated and even necessary to protect their rights as free laborers and citizens; but they were not well calculated to secure a successful administration of other public interests. . . . When ignorance and inexperience were admitted to so large an influence upon public affairs, intelligence ought no longer to so large an extent to have been excluded. In other words when universal suffrage was granted to secure the equal rights of all, universal amnesty ought to have been granted to make all the resources of political intelligence and experience available for the promotion of the welfare of all."—Jan. 30, 1872, *Globe*, p. 699.



[H. R. 2761] which, after a brief explanation by him and without any debate, passed by the requisite two-thirds vote. The yeas and nays were not called for and apparently the whole procedure did not consume ten minutes. Rainey a coloured member from South Carolina had obviously prepared a speech to be made on that bill but action was so quick he did not get a chance to make it. The House however good-naturedly allowed him to deliver it on a bill [H. R. 2564] which was considered immediately afterwards, and which removed by naming men specifically the disabilities of a large number not included in the general act. Rainey made an impressive appeal for magnanimity "towards those who were our former oppressors and taskmasters" and also a plea that full civil rights be accorded to his race.<sup>1</sup>

On May 21 the Senate took up the House General Amnesty bill, and after speedily voting down a number of amendments, among them Sumner's Civil Rights bill, proceeded without practically any debate to a vote. The bill was passed by 38 to 2. Sumner was one of the noes, and, while declaring himself in favour of amnesty, said that he could not vote for it, "while the colored race are shut out from their rights and the ban of color is recognized in this Chamber. Sir," he continued, "the time has not come for amnesty. You must be just to the colored race before you are generous to former rebels."<sup>2</sup>

This was the Act which was passed: "All political disabilities imposed by the third section of the fourteenth article of amendments of the Constitution of the United States are hereby removed from all persons whomsoever except Senators and Representatives of the Thirty-sixth and Thirty-seventh Congresses, officers in the judicial,

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<sup>1</sup> *Globe*, p. 3381 *et seq.*

<sup>2</sup> *Ibid.*, p. 3736; Sumner's Works, vol. xiv. p. 466; Pierce's Sumner, vol. iv. p. 502.

military and naval service of the United States, heads of Departments and foreign ministers of the United States.”<sup>1</sup> Before this became a law it was estimated that 150,000 to 160,000 were excluded from office;<sup>2</sup> this act reduced the disabilities to a number between 300 and 500.<sup>3</sup> Had House bill 2564 been agreed to by the Senate, all Confederates but about 150 would have been restored to full political privileges.<sup>4</sup>

The Act of May 22, 1872 is a bright spot in the reconstruction legislation of Congress and marks an advance towards a sounder policy than that which had prevailed. Nearly every one whom the Southern people desired to elect to office was made eligible although it is true there were notable exceptions such as Z. B. Vance, L. Q. C. Lamar, J. L. M. Curry, J. H. Reagan, John A. Campbell, Joseph E. Johnston, G. T. Beauregard, W. J. Hardee and William A. Graham; but the disabilities of these were removed if the occasion required.<sup>5</sup> After May 22, 1872 men like Alexander H. Stephens, Wade Hampton, Benjamin H. Hill, Herschel V. Johnson and A. H. Garland might be sent to Congress or hold any office in their State while Toombs was excluded.<sup>6</sup> Jacob Thompson was rightly debarred, but no Southern community would have thought of honouring him with election. Jefferson Davis too remained under disability, but propriety alone would have forbidden the considera-

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<sup>1</sup> Approved May 22, 1872. The Thirty-sixth Congress expired March 4, 1861, the Thirty-seventh March 4, 1863 but it was chosen in 1860.

<sup>2</sup> New York *Tribune*, May 23; Life of Bowles, Merriam, vol. ii. p. 123.

<sup>3</sup> New York *Tribune*, May 23.

<sup>4</sup> Bingham, May 13, 1872, *Globe*, p. 3382.

<sup>5</sup> Vance's disabilities were removed June 10, 1872, he became Senator in 1879; Lamar's Dec. 17, 1872, elected to Congress 1872; Reagan's Dec. 27, 1873, elected to Congress 1874; Curry's March 2, 1877, Minister to Spain 1885; Johnston's Feb. 23, 1877; Beauregard's July 24, 1876; Graham's Feb. 8, 1873.

<sup>6</sup> Toombs's disability was apparently never removed but I believe he never made application to have it done.

tion of his name for any office; he died before full amnesty was granted by the Act of June 6, 1898.<sup>1</sup>

Two other cheering incidents of this session should be mentioned. On April 23, 1872 Ransom, Senator from North Carolina, was sworn in whereupon Thurman remarked: "I take the liberty of expressing the satisfaction that I am sure all will feel, that now, for the first time since 1861 every seat in this body is full; every State is represented. I think it is a matter that the country and the Senate may congratulate themselves upon."<sup>2</sup>

The House passed a bill to remove the disabilities of Rogers, a Democratic member-elect from North Carolina but this was not concurred in by the Senate. The Act of May 22 gave him full rights, and next day George F. Hoar<sup>3</sup> moved that Mr. Sion H. Rogers "be now sworn in. Thereby, the representation of the entire Union in this House will be complete." "Happy event!" cried Randall. And Cox, "after seven years."<sup>4</sup>

The growth of sentiment adverse to the Republican party, which was due in large measure to its Southern policy, was clearly shown by the split in the party already referred to and by the changed complexion of the House of the Forty-second Congress [the one sitting from March 4, 1871 to March 4, 1873, elected in 1870]. In the previous Congress, the Republicans had a majority

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<sup>1</sup> Between May 22, 1872 and June 6, 1898 there were personally relieved from disabilities according to the indexes as follows: Forty-second Congress, 27; Forty-third, 47; Forty-fourth, 43; Forty-fifth, 38; Forty-sixth, 24; Forty-seventh, 1; Forty-ninth, 14; Fiftieth, 10; Fifty-first, 1; Fifty-second, 3; Fifty-third, 2; Fifty-fourth, 2. Total, 212.

On March 31, 1896 the ineligibility of commissioned officers of the U.S. Army or Navy, who served the Confederacy, to any position in the Army or Navy of the U.S. was repealed. The last personal act removing political disability was signed on Feb. 24, 1897.

<sup>2</sup> *Globe*, p. 2716.

<sup>3</sup> George F. Hoar began service in the House March 4, 1869.

<sup>4</sup> *Globe*, p. 3783. Samuel J. Randall of Pennsylvania and Samuel S. Cox, now of New York, were Democrats. Rogers was sworn in.

of 101 which was more than two-thirds; in this one, a majority of only 35.<sup>1</sup> And now on any phase of the Southern question the party vote could not be compactly held. The action of the House is significant of the change.

The fourth section of the Ku-Klux Act of April 20, 1871 authorized the President to suspend the privileges of the writ of *habeas corpus*, but this authorization expired at the end of the present session of Congress. The Republican majority of the Ku-Klux Committee recommended that this section be extended to March 4, 1873<sup>2</sup> and Senator Scott the chairman reported from his Committee a bill for that purpose<sup>3</sup> which passed the Senate. Two attempts were made in the House of Representatives to suspend the rules and put this bill upon its passage but on the first attempt the ayes were only 94 to the noes 108 and on the second, 56: 89.<sup>4</sup>

As part of the Civil Appropriation Act, Congress at this session, under the title of "Judiciary," amended the Federal Election Act of February 28, 1871 by broadening the scope of Federal interference at elections but on the other hand exacting the qualification of residence from supervisors and deputy marshals. The amendment also gave an interpretation of two sections of the preceding acts.<sup>5</sup> This law completed the positive work of reconstruction on the part of Congress (excepting the Civil Rights Act of 1875.) Much of it was afterwards undone by Congress; some of it was abrogated by decisions of the Supreme Court.<sup>6</sup>

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<sup>1</sup> National Conventions and Platforms, McKee, p. 142; *Tribune Almanac*.

<sup>2</sup> Report, p. 99.

<sup>4</sup> May 28, June 7, pp. 3931, 4323.

<sup>3</sup> *Globe*, p. 3579.

<sup>5</sup> Approved June 10, 1872.

<sup>6</sup> D. M. Matteson has prepared for me the following: The Act of Feb. 8, 1894, repealed all the sections of the Revised Statutes relating to Federal supervision of elections, specifying, besides the general repeal, certain sections. These sections embraced portions of the Acts of Feb. 25, 1865 (allowing troops at polls), May 31, 1870, Feb. 28, 1871, and that part of the Act of June 10, 1872, which amended the Act of Feb. 28, 1871. The pro-



visions of the Act of April 20, 1871 (Ku-Klux Act) were not affected by this repeal, but portions of it, as well as of the other Acts mentioned, have been affected by decisions of the Supreme Court which removed the protection given to civil rights and suffrage of the negroes from private attacks. I give below by sections the four Acts of 1870-1872 and indicate how they have been affected, disregarding the portions that treat of jurisdiction and procedure, which have not been altered though some of them are now obsolete. The word "stands" means that the section had not been repealed up to March, 1905, or declared unconstitutional by the Supreme Court as late as May 1905; but the force of some of the surviving sections has been weakened by the repeal or unconstitutionality of others. The figures in parentheses are the sections of the Revised Statutes based on the sections of the Acts.

May 31, 1870.

- § 1. (2004). Stands.
- § 2. (2005, 2006). Repealed by the Act of Feb. 8, 1894.
- § 3. (2007, 2008). Declared unconstitutional in *U.S. vs. Reese*, 92 U.S., 214 (1876), and repealed by the Act of Feb. 8, 1894.
- § 4. (2009, 5506). As § 3.
- § 5. (5507). Declared unconstitutional in *James vs. Bowman*, 190 U.S., 127 (1903).
- § 6. (5508). Stands; upheld in *U.S. vs. Waddell*, 112 U.S., 76 (1884).
- § 7. (5509). As § 6.
- § 8. Jurisdiction and procedure.
- § 9. (1982, 1983). Stands, but the field has been limited.
- § 10. (1984, 1985, 5517). As § 9.
- § 11. (5516). As § 9.
- § 12. Fees.
- § 13. (1989). Stands; the attorney-general on June 6, 1890, expressed the opinion that this section came within the exception to § 15 of the Act of June 18, 1878, which forbade the use of the regular army as a *posse comitatus* except where expressly authorized by Act of Congress.
- § 14. (1786). Obsolete, because all disabilities were removed by the Act of June 6, 1898.
- § 15. (1787). As § 14.
- § 16. (1977). Stands.
- § 17. (5510). Stands; the clause on immigration tax is scarcely germane.
- § 18. Re-enacted the Civil Rights law of 1866.
- § 19. (5511). Repealed by the Act of Feb. 8, 1894.
- § 20. (5512). Upheld in *Ex parte Siebold*, 100 U.S., 371 (1880), but repealed by the Act of Feb. 8, 1894.
- § 21. (5514). Repealed by the Act of Feb. 8, 1894.
- § 22. (5515). Repealed by the Act of Feb. 8, 1894.
- § 23. (2010). Repealed by the Act of Feb. 8, 1894.

Feb. 28, 1871.

This Act reappeared (excluding procedure, pay, etc.) in the Revised Statutes as §§ 27, 643 (as far as it related to the franchise), 2011, 2014, 2016-2027, 5512, 5513, 5521-5523. The main sections of it were upheld in *Ex parte*

Siebold (*supra*), but all were repealed by the Act of Feb. 8, 1894, except § 27. This section, which requires a written or printed ballot, stands, with the addition of Feb. 14, 1899, which permits a voting machine.

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April 20, 1871.

§ 1. (1979). Stands.

§ 2. The several clauses of this section were divided in the Revised Statutes as follows:—

(5336). Conspiracy against the government ; stands.

(1980, par. 2 ; 5406, 5407). Conspiracy against witnesses, jurors, and to obstruct justice ; stands.

(1980, par. 1 ; 5518). Conspiracy against holding office ; stands.

(1980, par. 3, cl. 1 ; 5519). Conspiracy (disguise) to deprive any one of the equal protection of the laws (the part of the Act especially directed against the Ku-Klux-Klan) ; declared unconstitutional in *U.S. vs. Harris*, 106 U.S., 629 (1883).

(1980, par. 3, cl. 2 ; 5520). Conspiracy to prevent the support of any candidate. 5520 was upheld in *Ex parte Siebold* (*supra*) but repealed by the Act of Feb. 8, 1894. 1980 was not mentioned ; it related to damages while the repealed section was one of criminal action.

§ 3. (5299). Stands.

§ 4. Temporary, and not included in the Revised Statutes.

§ 5. (822). Stands.

§ 6. (1981). Stands.

§ 7. Proviso ; not in the Revised Statutes.

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June 10, 1872.

The portions of this act which related to the present subject became in the Revised Statutes §§ 2009, 2011–2013, 2028–2031, which were all repealed by the Act of Feb. 8, 1894.

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The Act of Feb. 8, 1894, was introduced in the House on Sept. 11, 1893, by Tucker of Virginia ; it passed on Oct. 10, by a vote of 201 to 102, not voting 50. Analyzed, the vote stood : for, 193 Democrats and 8 Populists ; against, 102 Republicans. Of those absent, there were, 21 pairs of Republicans and Democrats, and one pair of a Republican and a Populist. The 6 unpaired were 3 Democrats, 1 Republican, 2 Populists (Record 1395, 2378). In the Senate, debate began on Dec. 19, 1893 and the vote was taken on Feb. 7, 1894 ; 39 for, 28 against, 17 not voting. Analyzed, the vote stood : for, 35 Democrats, 3 Populists, 1 Republican (Stewart of Nevada) ; against, 28 Republicans. Of those absent, 6 pairs of Democrats with Republicans were announced ; 3 Republicans and 2 Democrats were not paired.

In 1879 and 1880 the Democrats, having control of the House and Senate, made several attempts to repeal or annul the Federal supervision sections of these laws by direct bills and riders on appropriation bills. Hayes vetoed these as follows : —

April 29, 1879. An appropriation bill which forbade the use of troops at the polls, and prohibited the civil officers of the United States "from employing any adequate civil force . . . at the places where the Congressional elections were held." Hayes had signed the *posse comitatus* bill (*supra*), and thought that under existing laws there could be no military interference with elections.

May 12, 1879. A bill "to prohibit military interference at elections."

May 29, 1879. An appropriation bill for judicial expenses which refused appropriations for supervision of elections.

June 30, 1879. A bill for fees of marshals and deputies, containing a similar provision.

May 4, 1880. An appropriation bill which by implication repealed "important parts of the laws for the regulation of the United States elections."

June 15, 1880. A bill "regulating the pay and appointment of deputy marshals." (See Richardson, Messages, vol. vii.)

None of these bills was passed over the veto, but the deficiencies appropriation Act of June 16, 1880, which he signed, provided that the deputies should not be paid for services rendered at elections.

## CHAPTER XXXVIII

FOREIGN AFFAIRS now claim our attention.

At the end of 1865, while Adams was still minister to England, the British government, in response to his insistence upon reparation for damages caused by the *Alabama* and other Confederate cruisers which had been built in England, declined to undertake a further consideration of our claims.<sup>1</sup> Reverdy Johnson,<sup>2</sup> who succeeded him and arrived in England during August 1868, found the attitude of the government entirely changed. English statesmen were beginning to see that the precedent set by their country of the duties of a neutral during war might be turned most disastrously against England should she become involved in hostilities: her large merchant marine would be at the mercy of armed cruisers that her enemy could easily construct in the United States. Prussia and Austria had had their duel but Europe was still in a ferment and, as England might conceivably be drawn into a conflict at any moment, it was the duty of her ministers to settle as speedily as possible the disputed questions with the American government. Reverdy Johnson was received with open arms and invited to many dinners and banquets at which he spoke in effusive terms of the friendly senti-

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<sup>1</sup> Pierce's Sumner, vol. iv. p. 392, note 1; Russell to Adams, Nov. 2, 1865, Clarendon to Adams, Dec. 2, Dip. Corr. 1865, vol. i. p. 634, *ibid.*, 1866, vol. i. p. 28. Lord Stanley of the Derby ministry modified this position to an offer of "limited reference to arbitration in regard to the so-called 'Alabama' claims." Nov. 30, 1866, March 9, Nov. 16, 1867, *ibid.*, 1867, vol. i. pp. 188, 192, 211.

<sup>2</sup> Appointed by A. Johnson.



ment that should obtain between peoples of the same race, speaking the same language and reading the same literature. So overflowing with good feeling was he that he attended in September the annual feast of the Cutlers' Company at Sheffield, although he knew that Roebuck would be present. Roebuck had worked hard in 1863 in the House of Commons and out of it for the recognition of the Southern Confederacy,<sup>1</sup> and at this banquet, after Johnson had gushed over the "ties stronger than links of iron," followed him in a speech insulting to the government of the United States and its Minister. So little sense of the dignity of his position had he that next day he replied to "My friend Mr. Roebuck." Roebuck, irritated at the severe criticism of himself by the *Times* and other newspapers, wrote to the *Times* saying, Johnson "has given me every assurance that he felt greatly pleased by all that had happened since his arrival here, and to myself personally he used expressions of kindness and friendship which touched me very nearly." The following month, Johnson went to a banquet at Liverpool and shook hands cordially with Laird, who had built the *Alabama* and boasted of his work. If his effusiveness in speech and bearing helped at all in England to forward the negotiations which he promptly and energetically undertook, it proved to have the opposite effect at home where it injured his standing and impaired his authority.<sup>2</sup>

Under the direct and minute instructions of Seward, many of which were cabled over, Johnson on January 14, 1869 concluded with the English foreign secretary what is known as the Johnson-Clarendon convention.<sup>3</sup>

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<sup>1</sup> Vol. iv. pp. 368, 374.

<sup>2</sup> London *Times*, Sept. 4, 5, 8, 24, Oct. 23, 24, Nov. 10; Smalley to the New York *Tribune* of Sept. 16, Oct. 24, 26, 29, Nov. 4, 5; *The Nation*, Oct., Nov., Dec., pp. 342, 383, 541; cartoons in *Harper's Weekly*.

<sup>3</sup> It provided for the settlement of all claims arising since July 26, 1853. The *Alabama* claims were not expressly referred to. The claims should be

Johnson's "maudlin blarney," as Lowell called it,<sup>1</sup> had already foredoomed it to failure. It is true it failed to satisfy what were generally and rightly considered the just demands of the United States; but had the British government met Adams in a like spirit in 1865 or 1866 and agreed with him on a similar treaty it would undoubtedly have received the ratification of the Senate and the approval of the people. Sumner wrote to Motley that in 1866 "we would have accepted very little";<sup>2</sup> and in April 1869 he wrote to John Bright that if the Johnson-Clarendon treaty had been submitted to the Senate twelve months previously it would have been ratified without any dissentients.<sup>3</sup>

The treaty went over to the new administration and on April 13, 1869 was rejected by the Senate, receiving but one vote in its favour to 54 against it.<sup>4</sup> "It would have been vastly better to have made no speech at all," wrote Senator Fessenden to Hamilton Fish, Secretary of State, "and trusted to the effect of *such* a vote. But it was not possible for Sumner to omit availing himself of such an occasion."<sup>5</sup> The chairman of the Senate Committee on Foreign Relations therefore spoke for about an hour<sup>6</sup> before the vote was taken, and though his speech had no influence on the actual vote, for it was known from the first that the Senate was practically unanimous against the treaty, it proved a considerable factor in the ensuing negotiations.

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submitted to four commissioners, two named by Great Britain, two by the United States. Any disagreement was to be submitted to an umpire. If the commissioners could not agree upon one for all cases, he was to be chosen by lot in each particular case of difference. I have been helped in this abstract by Bancroft's Seward, vol. ii. p. 498; Moore's International Arbitrations, vol. i. p. 504.

<sup>1</sup> Letters, vol. ii. p. 26.

<sup>2</sup> July 6, 1869. Pierce's Sumner, vol. iv. p. 384, note.

<sup>3</sup> Life of Grimes, Salter, p. 370.

<sup>4</sup> Executive Journal, vol. xvii. p. 163.

<sup>5</sup> C. F. Adams, The Treaty of Washington, p. 209. In the consideration of this subject, this able and valuable essay will be referred to as C. F. Adams.

<sup>6</sup> Pierce's Sumner, vol. iv. p. 385.

For "the massive grievance under which our country [has] suffered for years," Sumner said, "there is not one word of regret or even of recognition; nor is there any semblance of compensation." "The true ground of our complaint," he continued, lies under three heads. "First in the concession to the [Confederate government] of ocean belligerency on which all depended;<sup>1</sup> secondly in the negligence which allowed the evasion of the *Alabama*;"<sup>2</sup> and thirdly in the "welcome, hospitality and supplies" which she was given in British ports. He quoted from Cobden to show that our direct or "individual losses" were \$15,000,000. "But," he said, "this leaves without recognition the vaster damage to commerce driven from the ocean, and that other damage, immense and infinite, caused by the prolongation of the war, all of which may be called *national* in contradistinction to *individual*." Under the first head he reckoned the damage \$110,000,000, and added, "Of course this is only an item in our bill." Touching the second head, he said: "The prolongation of the war may be traceable directly to England. . . . The rebellion was originally encouraged by hope of support from England; it was strengthened at once by the concession of belligerent rights on the ocean; it was fed to the end by British supplies . . . it was quickened into frantic life with every report from the British pirates, flaming anew with every burning ship; nor can it be doubted that without British intervention the rebellion would have soon succumbed under the well-directed efforts of the National Government. Not weeks or months but years were added in this way to our war, so full of costly sacrifice." He then proceeded to a rough calculation. "The rebellion was suppressed at a cost of more than four thousand million dollars . . . through British intervention

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<sup>1</sup> See my vol. iii. p. 417.

<sup>2</sup> For the case of the *Florida* and the *Alabama* see vol. iv. p. 80.

the war was doubled in duration ; . . . England is justly responsible for the additional expenditure." Sumner did not sum up the account. "Everybody can make the calculation," he said. And the calculation was \$15,000,000 for individual losses; \$110,000,000 on account of our merchant marine and two thousand millions on account of the prolongation of the war.<sup>1</sup>

Of all the outrageous claims of which our diplomatic annals are full, I can call to mind none more so than this. Curiously enough Sumner thought he had made a speech "kindly and pacific in tone."<sup>2</sup> "I have made no demand, not a word of apology, not a dollar," he wrote to Lieber, "nor have I menaced, suggested or thought of war. . . . To my mind our first duty is to make England see what she has done to us. How the case shall be settled, whether by money more or less, by territorial compensation, by apology or by an amendment of the law of nations, is still an open question; all may be combined."<sup>3</sup>

Sumner's speech was at first warmly approved by the Senate, which removed from it the usual injunction of secrecy on speeches made in executive session, so that it might be given to the country. It was reproduced far and wide by the press, was carefully read by the public and looked upon as a fair statement of our grievances and a just demand for compensation.<sup>4</sup> Lowell comprehended the situation when he wrote, the speech "expressed the feeling of the country very truly." But he went on to say: "I fear it was not a wise speech.

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<sup>1</sup> Sumner's Works, vol. xiii. pp. 53, 54, 58, 69, 77, 83, 84, 85, 86.

<sup>2</sup> It is so construed by Pierce, vol. iv. p. 386. The Conclusion (Works, vol. xiii. pp. 89-93), from which Pierce quotes largely, is susceptible of such a construction, but to apply that to the whole is to mollify the exasperating main body of the speech (ibid. pp. 53-89) with the tranquil words of the close.

<sup>3</sup> Pierce, vol. iv. p. 388.

<sup>4</sup> Ibid. ; *The Nation*, April 29, p. 330 ; *New York Tribune*, April 15, 21 ; *Boston Advertiser*, April 16 ; *Chicago Tribune*, April 19.



Was he [Sumner] not trying rather to chime in with that feeling than to give it a juster and manlier direction?"<sup>1</sup> The fact is, the "pacific tone"<sup>2</sup> of Sumner's fancy seemed to nearly everybody else in America and England as warlike as the Chairman of the Senate Committee on Foreign Relations could sound, if he maintained any regard whatever for international comity. At this time he was next to Grant the most prominent figure in our national life. At hardly any other period in his career did he possess so powerful a hold on the public; he both represented opinion and led it. The people believed that his knowledge and experience made him a safe guide;<sup>3</sup> and his giving to the "indirect claims" a greater force and definiteness than had ever attended them before was therefore an act that might easily work mischief to the country. It is true, the claims were naturally enough derived from those startling conclusions which Seward had drawn concerning the damage inflicted on us by the Queen's proclamation of neutrality [1861];<sup>4</sup> but, in directing the negotiation of the Johnson-Clarendon treaty, he had abandoned his previous untenable ground.

No American understood the question so well as Charles Francis Adams, who from the seclusion of private life followed closely the progress of our negotiations with England. "The practical effect of this" [Sumner's speech and the almost unanimous rejection of the Johnson-Clarendon treaty], he wrote, "is to raise the scale of our own demands of reparation so very high that there is no chance of negotiation left,

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<sup>1</sup> May 2, Letters, vol. ii. p. 29, see also pp. 26, 41.

<sup>2</sup> "Most pacific in character" — Works, vol. xiii. p. 124.

<sup>3</sup> Even Lowell was at first carried away by the general opinion, writing to Sumner on April 22, "I think you have struck exactly the true note — expressing the *national* feeling with temper and dignity." — Sumner, Corr. MS. Harvard Library.

<sup>4</sup> See citations C. F. Adams, p. 101.

unless the English have lost all their spirit and character. The position in which it places Mr. Bright and our old friends in the struggle is awkward to the last degree. Mr. Goldwin Smith who was at the meeting of the [Massachusetts] Historical Society, spoke of it to me with some feeling. . . . There were intimations made to me in conversation that the end of it all was to be the annexation of Canada by way of full indemnity. . . . I suppose that event is inevitable at some time; but I doubt whether it will come in just that form. Great Britain will not confess a wrong and sell Canada as the price of a release from punishment. . . . I begin to be apprehensive that the drift of this government under the effect of that speech will be to a misunderstanding; and not improbably an ultimate seizure of Canada by way of indemnification.”<sup>1</sup> Few Englishmen understood the question so well as John Bright. In conversation with Senator Grimes in London “he denounced Sumner quite vigorously and wound up by saying that he [Sumner] was either a fool himself or else thought the English public and their public men to be fools.”<sup>2</sup> Later Bright said that he supposed the speech was Sumner’s bid for the presidency.<sup>3</sup> The London press was excited and inflammatory.<sup>4</sup> “Our bonds here have fallen five per cent.,” wrote Grimes to Fessenden, “and the English people are really anticipating war with us, in which they expect to be aided by France. I have laughed and continue to laugh at the panic but it is really becoming serious.”<sup>5</sup> •

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<sup>1</sup> C. F. Adams, p. 103.

<sup>2</sup> May 10, Life of Grimes, Salter, p. 371.

<sup>3</sup> To E. L. Pierce. Private Conversation. This was unjust. Sumner would undoubtedly have liked the Republican nomination for 1868, but in April 1869 he certainly was not hoping for the nomination in 1872. Still more certain is it that he would not make a speech with any such purpose.

<sup>4</sup> Pierce’s Sumner, vol. iv. p. 390.

<sup>5</sup> May 10, Life of Grimes, p. 371. Lowell wrote to Godkin on May 2, 1869: “We are crowding England into a fight which would be a horrible

Adams had correctly divined Sumner's idea. Our claim against England was too large for satisfaction in money but she had a convenient asset in Canada and British America, the transfer of which together with perhaps some small concessions, would balance the account. The idea of compensation by the cession of this territory was in the air and Sumner gave to it the seal of his weighty approval; but although his speech sounded bellicose he was really opposed to war with England. He insisted that British America should come to us by "peaceful annexation, by the voluntary act of England and with the cordial assent of the colonists."<sup>1</sup> The practical effect, though, of his speech was that the flame of Jingoism burned brighter, indeed looked difficult to quench in this day of Fenian demonstrations against Canada and of a growing and aggressive Irish vote. The average American could not comprehend the refined inconsistency of the Massachusetts senator, who, after presenting his bill, was willing to wait on time for its collection. Sumner had put forward the "massive grievance" and had hinted at the way in which it should be atoned for. Senator Chandler, agreeing with him in principle, declared for a policy which seemed to the average American a necessary sequel to Sumner's indictment. "If Great Britain," Chandler said in the debate on the Johnson-Clarendon convention, "should meet us in a friendly spirit, acknowledge her wrong and cede all her interests in the Canadas in settlement of these claims, we will have perpetual peace with her; but if she does not we must conquer peace. We cannot afford to have an enemy's base so near us. It is a

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calamity for both—but worse for us than for them. It would end in our bankruptcy and perhaps in disunion. As for Canada—I doubt if we should get by war what will fall to us by natural gravitation if we wait." — *Letters*, vol. ii. p. 28.

<sup>1</sup> Pierce's Sumner, vol. iv. p. 637. A fair and concise statement of Sumner's position is his speech of Sept. 22, 1869, Works, vol. xiii. p. 127.

national necessity that we should have the British possessions. I hope that such a negotiation will be opened and that it will be a peaceful one; but if it should not be and England insists on war, then let the war be 'short, sharp and decisive.'"<sup>1</sup> Johnson being out of the White House, domestic tranquillity seemed assured; and with Grant for President and two generals like Sherman and Sheridan devoted to him, Americans in the spring of 1869 felt themselves able to cope with any foreign power. President Grant thanked and congratulated Sumner on his speech<sup>2</sup> but if he had given his mind to the Alabama claims his policy would have been Chandler's and he would have entered on it without fear; for he said in 1878 that, even during the Civil War, he had had no misgivings as to the issue of a war with England consequent upon her recognizing the Southern Confederacy; indeed he believed that with our resources in 1863-1864 Sheridan could have taken Canada in thirty days.<sup>3</sup>

President Grant was in favour of expansion of the country but his eye was directed southwards instead of northwards, which was fortunate, for he left the English question in the hands of his Secretary of State. Hamilton Fish, a lawyer cautious and conservative, clear-sighted and straight-thinking, did not entirely agree with Sumner. "We cannot stand upon his speech in all its points," he wrote, and determined to keep the negotiations in his own hands. "The atmosphere and the surroundings of this side of the water," he said in a private letter, "are more favorable to a proper solution of the question than the dinner tables and the public banquetings of England." Through Caleb Cushing, an interview was arranged in July 1869 between

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<sup>1</sup> Cited by C. F. Adams, p. 152.

<sup>2</sup> Pierce's Sumner, vol. iv. p. 389.

<sup>3</sup> C. F. Adams, p. 153, note; John Russell Young, *Around the World with General Grant*, vol. ii. p. 167.



Fish and John Rose, a member of the Canadian ministry, "a natural diplomat of a high order," having official and personal relations with the public men of England. In the friendly interchange of sentiments between these two, the way was paved for an understanding.<sup>1</sup> Rose went to England and laboured there in the interest of peace and justice. Fish, in a private letter written in September, disclosed his own views which were pacific, wise and patriotic; to take such a position in the face of the bellicose public sentiment which had been stimulated by Sumner and Chandler required a high degree of courage. "The two English-speaking, progressive, liberal governments of the world should not, must not, be divided," he wrote — "better let this question rest for some years even (if that be necessary) than risk failure in another attempt at settlement. I do not say this because I wish to postpone a settlement — on the contrary I should esteem it the greatest glory and greatest happiness of my life, if it could be settled while I remain in official position; and I should esteem it the greatest benefit to my country to bring it to an early settlement. . . . I would not if I could impose any humiliating condition on Great Britain, I would not be a party to anything that proposes to 'threaten' her. I believe that she is great enough to be just; and I trust that she is wise enough to maintain her own greatness. No greatness is inconsistent with some errors. Mr. Bright thinks she was drawn into errors — so do we. If she can be brought to think so, it will not be necessary for her to say so; at least not to say it very loudly. It may be said by a definition of what *shall* be Maritime International Law in the future, and a few kind words. She will want in the future what we have claimed. Thus she will be benefited — we satisfied."<sup>2</sup>

Having given Fish free scope on the Alabama claims,

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<sup>1</sup> C. F. Adams, pp. 111, 112, 123.

<sup>2</sup> *Ibid.*, p. 125.

Grant went into diplomacy on his own account. At the time of his accession to the presidency, an insurrection existed in Cuba which Spain was endeavouring to suppress. The Cubans inspired considerable sympathy in our country, especially in New York; they made appeals to our government for aid,<sup>1</sup> and succeeded in enlisting in their cause General Rawlins, Grant's faithful mentor during the civil conflict,<sup>2</sup> now Secretary of War and possessing almost unbounded influence with the President,<sup>3</sup> whom he won over to his view. Confident that the Cubans would succeed, Grant on June 9 asked Sumner "how it would do to issue a proclamation with regard to Cuba identical with that issued by Spain with regard to us" [that is to accord belligerent rights to the Cuban insurgents]. Sumner advised against it<sup>4</sup> but failed to stay the President's hand. Having directed that such a proclamation be drawn up, he signed it on August 19 in the cabin of the Fall River steamboat, and gave it to Bancroft Davis (the Assistant Secretary of State) to take to Washington with a note to Fish requesting him to sign it and affix the official seal. With this word went also a command to issue the proclamation. Fish saw that this was an unwise move. The Cuban insurgents, he afterwards wrote in a private letter, "have no army . . . no courts, do not occupy a single town or hamlet, to say nothing of a seaport" . . . they are "carrying on a purely guerrilla warfare, burning estates and attacking convoys, etc. . . . There has been nothing that has amounted to 'War.' Belligerency is a fact. Great Britain or France might just as well have recognized belligerency for the Black Hawk War." Fish signed the proclamation but did not issue

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<sup>1</sup> Appletons' Annual Cyclopædia, 1869, p. 208.

<sup>2</sup> See my vol. iv. p. 302.

<sup>3</sup> J. D. Cox, *Atlantic Monthly*, Aug. 1895, p. 164. In this connection this will be referred to as J. D. Cox.

<sup>4</sup> Pierce's Sumner, vol. iv. p. 409.

it; he caused it to be deposited in a safe place awaiting further instructions<sup>1</sup> which never came. Grant turned his attention to finance, to the price of gold and to the moving of the crops. With the death of Rawlins [September 6] the powerful pressure on him in favour of the Cubans ceased. The Gould-Fisk gold corner and "Black Friday"<sup>2</sup> supervened to absorb his attention, so that apparently he forgot to inquire why his proclamation had not been issued. In the end Fish's policy towards Cuba prevailed, as was seen by a paragraph in Grant's annual message of December 6, 1869 and by the correct attitude assumed by the President in his special message on Cuban affairs of June 13, 1870. "On two important occasions, at least," Grant said to Fish, "your steadiness and wisdom have kept me from mistakes into which I should have fallen" [the non-issuance of the belligerency proclamation August 1869 and the Cuban message of June 13, 1870].<sup>3</sup>

Much more important for its striking influence on public affairs was Grant's other diplomatic venture in the West Indies. Hayti and San Domingo, now republics, were the ancient French and Spanish dominions on the same island. San Domingo possessed nearly two-thirds of the territory but had a much smaller population and fewer resources than Hayti.<sup>4</sup> The country was in a revolutionary condition. Baez, the chief of the republic of San Domingo, finding it difficult to maintain his power against his rival, concocted the scheme of selling his country to the United States. Some of the money would stick to his fingers and some of it would go to Americans who brought about the annexation. San Domingo according to Grant was one of the richest countries under the sun; having now a

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<sup>1</sup> C. F. Adams, p. 118.

<sup>2</sup> *Ante.*

<sup>3</sup> Remark made shortly previous to July 10, 1870. C. F. Adams, p. 119 note.

<sup>4</sup> Pierce, vol. iv. p. 427; International Encyclopædia.

population of only about 120,000 it was "capable of supporting 10,000,000 people in luxury";<sup>1</sup> and there would of course be valuable concessions of one sort and another. The project of annexation was apparently nothing in the world but a money-making scheme, yet it must be said at the outset that Grant's own motives, though mistaken, were entirely patriotic. Although at the time it was suspected and even openly alleged that he had a corrupt interest in annexation there is absolutely no ground for such an imputation.

One day during the early months of his administration, the President remarked that the Navy Department desired the bay of Samana at the eastern end of San Domingo as a coaling station and "he thought he would send Colonel Babcock down to examine it and report upon it as an engineer." Orville E. Babcock had been on Grant's military staff, and was now nominally an assistant private secretary, but, as his subsequent career showed, he was a man without principle.<sup>2</sup> In July [1869] Babcock went to San Domingo, returning in the early autumn. J. D. Cox [Secretary of the Interior] seeing a statement in the *New York Herald* that he had concluded an important negotiation went to see Fish who at once opened up the subject. "What do you think!" he said. "Babcock is back and has actually brought a treaty for the cession of San Domingo; yet I pledge you my word he had no more diplomatic authority than any other casual visitor to that island! I am opposed to it and shall oppose it in cabinet meeting."

When the heads of the departments met on the usual day in the President's room at the White House, Babcock was already there and showed to each of them, as

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<sup>1</sup> Grant's message of Dec. 5, 1870.

<sup>2</sup> J. D. Cox, p. 165; Pierce, vol. iv. p. 429, note; Life of Morton, Foulke, vol. ii. p. 147.



they arrived, specimens of ores and other Dominican products, descanting upon the extraordinary value of the island. He left the room of course before the business of the day began. The President at once took up the word. "Babcock has returned as you see," he said, "and has brought a treaty of annexation. I suppose it is not formal, as he had no diplomatic powers; but we can easily cure that. We can send back the treaty and have Perry, the consular agent, sign it; and as he is an officer of the State Department it would make it all right." The members of the cabinet were dumb-founded. At last Cox broke the awkward silence. "But, Mr. President," he asked, "has it been settled, then, that we *want* to annex San Domingo?" Grant "colored and smoked hard at his cigar." He glanced at Fish on his right, who said not a word but looked straight at his portfolio; he turned to Boutwell on his left, only to encounter the same rigid silence. The President did not answer Cox's question and at last, to end the embarrassment, called for another item of business.

Fish felt that he was compromised because a treaty had been negotiated without his authority or consent. In a private interview he offered his resignation and pressed it upon Grant. Grant would not accept it, but made an earnest personal appeal. "You must not go," he said, and, thinking of his own and Mrs. Grant's lack of social qualifications, "We need you and your wife."<sup>1</sup> Fish respected and loved Grant.<sup>2</sup> He not only remained in the cabinet but became a loyal though not an ardent supporter of his Dominican policy, which was never again brought up for discussion in cabinet meeting.<sup>3</sup> Later

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<sup>1</sup> I have made up this account from J. D. Cox's *Atlantic Monthly* article and from his conversation with me on July 8, 1893 of which I made notes at the time. On Fish's disinclination to hold office, see C. F. Adams, p. 220.

<sup>2</sup> C. F. Adams, p. 247.

<sup>3</sup> J. D. Cox, p. 167. See Fish's explanation of his action, C. F. Adams, p. 222.

[in 1870] Grant thanked Fish for his aid when Boutwell was adverse, Hoar derisive, and Cox unwilling to say a favourable word.<sup>1</sup> There must have been a tacit bargain between the two that in return for this assistance, the Secretary should have practically a free hand in the Cuban and English matters.

The chilling reception his project met with in the cabinet did not turn the President from his purpose. Babcock was sent back to San Domingo and on November 29 [1869] concluded a treaty for the annexation of the Republic which provided that our government should pay \$1,500,000 to be used for the liquidation of her debt.<sup>2</sup> The tenure of Baez was precarious. Threatened with revolt in his own country and with attacks from Hayti, he was maintained in power by our navy.

Grant now directed his energy to securing the ratification of his treaty by the Senate. Sumner, the chairman of the Committee on Foreign Relations, was the most important man and on him the President called on an evening early in January, 1870 to bespeak his support. Grant's ignorance of civil affairs was shown in his addressing Sumner four times as chairman of the Judiciary Committee, that being the committee to which he thought the treaty would be referred. At the end of the interview Sumner said, "Mr. President, I am an Administration man and whatever you do will always find in me the most careful and candid consideration." The President went away from Sumner's house with the impression that he had gained his support.

To the Committee on Foreign Relations the treaty went in due course. On March 15 [1870] Sumner, Patterson, Schurz, Cameron and Casserly joined in a report adverse to ratification; Morton and Harlan favoured the treaty. In the Senate Sumner spoke against it, Morton in its favour. Out of loyalty to the President, Fish, who had

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<sup>1</sup> C. F. Adams, pp. 142, 222.    <sup>2</sup> R. H. Perry signed the treaty on behalf of the U.S.

long been a friend of Sumner's, now pleaded with the senator, more than once, to give the treaty his support, going to his house a fortnight before the final vote and arguing with him from nine until midnight. On June 30 the vote in the Senate was taken; it was a tie, 28 to 28, and, ratification requiring two-thirds, the treaty was rejected.<sup>1</sup> Grant had extravagant ideas of the value of San Domingo and his heart was set upon its annexation. Moreover, as was his nature, when he set out to accomplish anything, he ardently desired to win; he had personally solicited the votes of senators. When the Senate refused to ratify the treaty, his anger was intense and was directed mainly against Sumner whom he held responsible for this adverse action. Believing too that he had received the assurance of the senator's support, Grant regarded him as one who had proved faithless. "In the progress of the discussion on the treaty Sumner became much excited and talked freely against the manner of its negotiation and bitterly assailed Babcock in a way which could only reflect on the President. Charges of fraud and corruption were sent from here [Washington] over the country which the President believed emanated indirectly from Sumner."<sup>2</sup> Every inch a soldier, Grant was accustomed to put out of his way those who did not carry out his behests. He would have liked to remove Sumner from the chairmanship of his committee. That being for the present out of the question, he struck at his friend John Lothrop Motley who had been appointed minister to England largely on Sumner's recommendation, and who, during his mission, had committed

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<sup>1</sup> Pierce's Sumner, vol. iv. Sumner's Works, vol. xiv. Executive Journal, vol. xvii. p. 502. Sixty-one out of seventy-two senators were supporters of the administration. Twenty-eight Republicans voted for the treaty including Cameron; seven Republicans were paired in favour of it; nine Democrats voted against the treaty, one was paired. Nineteen Republicans voted against it, among them Edmunds, Morrill (Vt.), Morrill (Me.), Schurz and Sumner. Trumbull and Sherman among others were absent without pairs.

<sup>2</sup> Private letter of Morton, Life, vol. ii. p. 166.

the error of acting on the senator's instructions rather than on those of the Secretary of State. Next day after the Senate vote, Grant directed Fish to ask Motley for his resignation.<sup>1</sup>

Here the matter should have ended. The House of Representatives and the people were opposed to annexation but Grant never believed in turning back and in his message of December 5, 1870 he urged more strongly than ever the acquisition of San Domingo. "If we abandon the project," he said, "I now firmly believe that a free port will be negotiated for by European nations in the Bay of Samana."<sup>2</sup> The possession of San Domingo, he argued, will open a wide market for our products. Her production of sugar, coffee, tobacco, tropical fruits being then our own, "will cut off more than one hundred millions of our annual imports. . . . With such a picture it is easy to see how our large debt abroad is ultimately to be extinguished." He recommended that Congress by joint resolution should authorize the Executive to appoint a commission to negotiate a treaty for annexation so that this "great prize" should be secured. Morton, a faithful friend of Grant's, told him that no such resolution could pass the Senate and the failure of it would be regarded as a defeat of the administration; but a creditable way out of the difficulty would be to obtain the appointment of a commission of investigation;<sup>3</sup> and he forthwith offered in the Senate a resolution providing for such a commission.

Sumner was as implacable as Grant. The quarrel between the two had grown more acute during the summer. Tale-bearers and busy-bodies bore to the

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<sup>1</sup> Pierce; C. F. Adams.

<sup>2</sup> In his message of May 31, 1870 to the Senate, he said, "I have information which I believe reliable that a European power stands ready now to offer \$2,000,000, for the possession of Samana Bay alone, if refused by us."

<sup>3</sup> Life of Morton, Foulke, vol. ii. p. 151.



President false reports of the senator's talk, whilst Sumner was as credulous as a child when it came to references to himself at the White House. Age had not toned down Sumner's besetting faults. His arrogance and self-conceit seemed to glare in the heat of controversy; opposition made him more overbearing. Judge Hoar often called on him in the evening, and as Sumner accompanied his departing visitor to the door, he would denounce the occupant of the White House which was no farther away than the other side of Lafayette Square, raising his voice until he roared "like a bull of Bashan," so that as Judge Hoar declared, "it would at times seem as if all Washington including Mrs. Grant must hear him and the police would have to interfere."<sup>1</sup> Grant was equally outspoken. One day George F. Hoar joined him as he was walking on Pennsylvania Avenue and by permission opened up the matter of business he had in mind. The President talked in a quiet and friendly manner until they came to Lafayette Square and turned the corner by Sumner's house when with great emphasis and shaking of closed fist he said, "That man who lives up there has abused me in a way which I never suffered from any other man living."<sup>2</sup> "Sumner," adds Hoar, "did injustice to Grant; Grant did injustice to Sumner. The judgment of each was warped and clouded until each looked with a blood-shotten eye at the conduct of the other."<sup>3</sup>

Sumner had now a good opportunity to let the quarrel drop. He and the anti-annexationists had won. It was certain that Grant with all his power could not bring about the annexation of San Domingo either by ratification of treaty or by joint resolution of both Houses. Sumner had good advice from his friend Senator Morton. "Sumner came to me in the Senate," wrote Morton in a private letter, "and asked me if I intended

<sup>1</sup> C. F. Adams, p. 247.

<sup>2</sup> Autobiography, vol. i. p. 211.

<sup>3</sup> Ibid., p. 212.

to call up my resolution. . . . I told him I did. He then said he should oppose it and should feel bound to make statements that would be very painful statements, in regard to the President. I remonstrated with him earnestly and told him the resolution was one of inquiry only and committed nobody and that I hoped it would pass without debate; that if he did what he threatened, the friends of the President would feel bound to defend him and it would lead to an open rupture. He then said he could not refrain, because his life had been threatened at the White House by Grant and Babcock. This I told him was ridiculous and he would be laughed at if he talked about it.”<sup>1</sup>

Sumner's cause was won but he was not a good enough lawyer to let it go to the jury without remark; he was persistent in his determination to make a speech. Love of notoriety, his duty as it appeared to him, and his bitter personal feeling urged him forward. He had moreover an absurdly exaggerated idea of the value and influence of his own utterances. “It sometimes seemed,” wrote George F. Hoar, a great admirer, “as if Sumner thought the Rebellion itself was put down by speeches in the Senate.”<sup>2</sup> On December 21, [1870] he spoke in his worst and most extravagant style. He began, “The resolution commits Congress to a dance of blood”; and he intimated that Grant was following in the footsteps of Pierce, Buchanan and Andrew Johnson.<sup>3</sup> “In speaking of the President,” wrote Morton, “his manner was bitter and excited, and his course is generally regretted by his best friends, among whom I am one.”<sup>4</sup> Morton made a dignified reply whilst Chandler and Conkling indulged in bitter personal attacks on the Massachusetts

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<sup>1</sup> Life of Morton, Foulke, vol. ii. p. 166.

<sup>2</sup> Autobiography, vol. i. p. 212.

<sup>3</sup> Pierce, vol. iv. p. 457, gives a more favourable abstract of the speech than I can. In his works it is entitled “Naboth's Vineyard.”

<sup>4</sup> Life of Morton, Foulke, vol. ii. p. 167.

senator. Conkling expressed his individual opinion that the Committee on Foreign Relations ought to be reorganized so that it should no longer be led by a virulent opponent of the administration.

Morton's resolution passed the Senate. The House agreed to it with an amendment carried by 108 yeas to 76 nays<sup>1</sup> providing that nothing in the resolution should be construed as committing Congress to the policy of annexing San Domingo. Benjamin F. Wade, Andrew D. White and Samuel G. Howe were appointed commissioners. They visited San Domingo<sup>2</sup> and made a report favourable to annexation; but it was seen to be impossible to obtain a two-thirds vote for it in the Senate or a majority vote in the House and the project was perforce relinquished.

Meanwhile Fish with great discretion was prosecuting the Alabama claims. What made his task one of extreme delicacy was the strong feeling in the country that Canada should be ours. The President was in sympathy with this feeling and the subject was broached more than once in cabinet meetings. Curiously enough the British minister, Sir Edward Thornton, lent to our hopes a not unwilling ear. In December 1869, and January 1870, Fish urged on him the withdrawal of Great Britain from Canada. "Oh you know that we cannot do," Sir Edward replied. "The Canadians find fault with me for saying so openly as I do that we are ready to let them go whenever they shall wish; but they do not desire it." Fenianism was still rampant and, though the attitude of our government towards the threatened invasions of Canada was correct, here was an argument that might properly be used in a confidential conversation with the British minister. In March Fish came forward with it. Thornton said in reply:

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<sup>1</sup> *Globe*, p. 416.

<sup>2</sup> See Andrew D. White's animated account of the visit. *Autobiography*, vol. i. p. 483.

“It is impossible for Great Britain to inaugurate a separation. They are willing and even desirous to have one. Europe may at any moment be convulsed; and if England became involved, it would be impossible to prevent retaliation and the ocean would swarm with *Alabamas*. England would then be compelled to declare war.” The outbreak of the war between Prussia and France during the summer of 1870 made England more eager than ever for a settlement but she still held firm on the question of Canada. On the other hand, “The President,” wrote Fish, “evidently expects these provinces to be annexed to the United States during his administration. I hope that it may be so. That such is their eventual destiny I do not doubt; but whether so soon as the President expects may be a question.” To meet Thornton’s position, one suggestion in regard to the settlement of the Alabama claims was that it should provide for “the submission to the voters of the Dominion of the question of independence.” But Thornton was wary. In September 1870 when Europe was in a turmoil he said to Fish: “It is impossible to connect the question of Canadian independence with the Alabama claims; not even to the extent of providing for the reference of the question of independence to a popular vote of the people of the Dominion. Independence means annexation. They are one and the same thing.”<sup>1</sup>

Fish saw clearly the insurmountable obstacle to our possession of Canada: the Canadians preferred the government of Great Britain to our own. Like the wise diplomat he was, he then dropped the unattainable

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<sup>1</sup> C. F. Adams, p. 157 *et seq.* “Shortly before Lord Dufferin crossed the Atlantic [to take up the position of Governor-General of Canada] Robert Lowe came up to him in a London Club and said, ‘Now you ought to make it your business to get rid of the Dominion’; and this was a view which some years earlier had been expressed by Sir Henry Taylor to the Duke of Newcastle.” — *The Nation*, Oct. 26, 1905. On the difference of English sentiment regarding the colonies then and now, see letter of “An Observer” [presumably A. V. Dicey] in *The Nation*, cited by C. F. Adams, p. 149.



from the discussion and on November 20, 1870 "asked merely an expression of regret on the part of Great Britain, an acceptable declaration of principles of international law and payment of claims."<sup>1</sup> But having apparently yielded something, he determined to have a settlement on his own terms, and, deeming the time propitious, he very pointedly expressed his determination in a paragraph which Grant incorporated in his message of December 5, 1870.<sup>2</sup> "I regret to say," are the words of the message, "that no conclusion has been reached for the adjustment of the claims against Great Britain growing out of the course adopted by that Government during the rebellion. The cabinet of London, so far as its views have been expressed, does not appear to be willing to concede that Her Majesty's Government was guilty of any negligence or did or permitted any act during the war by which the United States has just cause of complaint. Our firm and unalterable convictions are directly the reverse. I therefore recommend to Congress to authorize the appointment of a commission to take proof of the amount and ownership of these several claims, on notice to the representative of Her Majesty at Washington, and that authority be given for the settlement of these claims by the United States, so that the Government shall have the ownership of the private claims as well as the responsible control of all the demands against Great Britain. It cannot be necessary to add that whenever Her Majesty's Government shall entertain a desire for a full and friendly adjustment of these claims the United States will enter upon their consideration with an earnest desire for a conclusion consistent with the honor and dignity of both nations."

In the meantime Sir John Rose had been working in England to the same end as Fish. Even while the Lon-

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<sup>1</sup> C. F. Adams, p. 162.

<sup>2</sup> Ibid., p. 133.

don press was fuming over the menace contained in the President's message, Fish was reading in cabinet meeting a private letter from Rose "intimating that the British cabinet is disposed to enter on negotiations."<sup>1</sup> On January 9, 1871 Rose arrived in Washington and in the evening dined with Fish. After dinner a conversation began which continued until two or three o'clock in the morning. Next day Rose communicated with the Foreign Office in London. Followed a confidential memorandum from Rose to Fish which resulted in the Treaty of Washington.<sup>2</sup>

Fish now deemed it time to take the chairman of the Committee on Foreign Relations into his confidence but he and Sumner were no longer on speaking terms. Having long held aloof from the quarrel between Grant and Sumner and remained loyal to the President and friendly to both, he had at last been drawn into the strife through the conduct of Motley. Motley, as we have seen, was on July 1, 1870 asked to resign, but he refused to do so and remained at his post until December when he was peremptorily removed. As his last official act he wrote a controversial and fault-finding despatch to the Secretary of State.<sup>3</sup> Fish, who had earnestly tried to keep the peace on all sides and was himself constantly desirous of getting out of his irksome official position, was irritated by Motley's disregard of the President's will and still more irritated by his final shot. Slow to anger, he was uncompromising, once his Dutch blood was thoroughly aroused, and now as a reply to Motley he wrote a letter to Moran, secretary of the legation at London, in which there was a passage that Sumner considered a personal insult.<sup>4</sup> The friendship of years was broken.

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<sup>1</sup> C. F. Adams, pp. 134, 162.

<sup>2</sup> Bancroft Davis, Mr. Fish and the Alabama Claims, p. 59.

<sup>3</sup> A brief abstract is given by Holmes, Life of Motley, p. 161.

<sup>4</sup> Pierce, vol. iv. p. 465; C. F. Adams, p. 171.

An arrangement however was made for an official interview between the Secretary and the chairman of the Committee on Foreign Relations.<sup>1</sup> Fish's diary tells the story: "1871. January 15. Sunday. Call upon Sumner; introduce the question and read to him Rose's 'confidential memorandum.' He declaims . . . I try to obtain from Sumner an expression of opinion as to the answer to be given to Rose. . . . Finally I tell him that I have come officially to him as chairman of the Senate Committee on Foreign Relations to ask his opinion *and* advice; that I am entitled to it as I must give an answer, etc. He says that it requires much reflection, etc. I then on leaving him request him to consider the subject and to let me know his opinion within a day or two." Two days later Sumner sent to Fish a memorandum submitting this indispensable condition: "The greatest trouble, if not peril, being a constant source of anxiety and disturbance, is from Fenianism which is excited by the British flag in Canada. Therefore the withdrawal of the British flag cannot be abandoned as a condition or preliminary of such a settlement as is now proposed. To make the settlement complete, the withdrawal should be from this hemisphere, including provinces and islands."<sup>2</sup>

Sumner's worst defects are shown in this Memorandum. His idea was quite impracticable and inconsistent with his real opinion that we must obtain Canada only by the free consent of her people. Blind as he often was to see what he wished not to see, it must still have been apparent to him that the Canadians were unwilling to sever their connection with Great Britain. The only possible effects of his condition, if imposed, would be either rupture of the negotiations, in

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<sup>1</sup> At the time this interview was arranged, Sumner had not read Fish's letter to Moran, (Mr. Fish and the Alabama Claims, B. Davis, p. 134,) but he had undoubtedly heard of the offensive passage.

<sup>2</sup> C. F. Adams, p. 145 *et seq.*; Bancroft Davis, p. 65.

which case the Alabama claims and Fenianism would be held as a club over Great Britain to be used when she was in difficulty, or else to risk a postponement of a settlement, in which case it must be hoped that peaceful insistence would finally bring her to his terms. It was indeed a curious proposal coming from one who was supposed to be at the same time a patriotic American and a lover of the ancestral country. As it is quite conceivable that Sumner's vanity was deeply hurt when he realized for the first time that he was no longer so great a factor in the conduct of foreign affairs as he had formerly been, Charles F. Adams's surmise may be the true explanation of his action. "By formulating demands which he knew would not be entertained," Adams writes, "he hoped at once to end the proposed negotiation."<sup>1</sup> Fish and the President fortunately determined to ignore Sumner's Memorandum and proceed in their efforts to obtain a settlement; we may be sure that the support Grant was giving to his Secretary was no less cordial for the knowledge that it was in the line of beating Sumner. Immediately after calling on Sumner [January 15] Fish went to see Morton and asked if he thought that a treaty on the basis which he proposed would be ratified by the Senate against Sumner's opposition. Morton said he thought it would; and Fish proceeded to confer with other leading senators of his own party and also with Bayard and Thurman, Democrats, receiving many promises of support.<sup>2</sup> On January 24, he saw Rose again, showing confidentially the "Sumner hemispheric flag-withdrawal memorandum" and saying that the administration would spare no effort "to secure a favorable result even if it involved a conflict with the chairman of the Committee on Foreign Relations in the Senate."<sup>3</sup> By February 1, owing to the free use

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<sup>1</sup> p. 165.

<sup>2</sup> Moore, *International Arbitrations*, vol. i. p. 529.

<sup>3</sup> C. F. Adams, p. 176; Moore, pp. 528-530.



of the Atlantic cable by Rose and Thornton and to the friendly temper of the Gladstone government, an agreement was reached to submit the Alabama claims and other differences between the two governments to a Joint High Commission which should by treaty arrange a mode of settlement and provide machinery therefor.<sup>1</sup>

The President sent the correspondence to the Senate and nominated five commissioners who were promptly confirmed.<sup>2</sup>

On February 27, 1871 the Joint High Commission commenced its session in Washington. The British members were: Earl de Grey and Ripon, a member of Gladstone's cabinet, Sir Stafford Northcote, a Conservative, Sir Edward Thornton, the British minister at Washington, Professor Mountague Bernard of Oxford University, and Sir John A. Macdonald, the Premier of Canada. The American members were: Fish, Samuel Nelson, Justice of the Supreme Court, Judge Hoar, Robert C. Schenck who had been appointed minister to Great Britain to succeed Motley, and Senator George H. Williams of Oregon. "We are on the best of terms," wrote Northcote, "with our colleagues, who are on their mettle and evidently anxious to do the work in a gentlemanly way and go straight to the point."<sup>3</sup> Political and social functions were blended. "Dinner parties, dances, receptions and a queer kind of fox hunt with picnics and expeditions in the beautiful Virginia country alternated with serious business and grave discussions."<sup>4</sup> Earl de Grey displayed "excellent sense, tact and temper";<sup>5</sup> and "under the skilful business guidance of Fish the settlement moved quietly and rapidly to its fore-ordained conclusion,"<sup>6</sup> — the Treaty of Washington, signed on May 8, 1871.

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<sup>1</sup> Moore, pp. 528-530.    <sup>2</sup> Feb. 9, 10, Executive Journal, vol. xvii. pp. 644-651.

<sup>3</sup> Cited by Bancroft Davis, p. 73.

<sup>4</sup> Lang's Northcote, cited by Moore, p. 544, note 2.

<sup>5</sup> Northcote to Gladstone, "Life of Gladstone," Morley, vol. ii. p. 404.

<sup>6</sup> C. F. Adams, p. 178.

The treaty covered a number of differences between the two countries but I shall only concern myself with the Alabama claims. In Article I it is stated, "Her Britannic Majesty has authorized the High Commissioners to express in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the *Alabama* and other vessels from British ports and for the depredations committed by those vessels." It was provided that the Alabama claims should be referred to a Tribunal of Arbitration composed of five arbitrators: one each to be appointed by the President of the United States, Her Britannic Majesty, the King of Italy, the President of the Swiss Confederation and the Emperor of Brazil. The arbitrators should meet at Geneva. Article VI laid down three rules binding neutral governments in a time of war to use due diligence, such as, according to the American statement of the facts, would have prevented the escape of the *Florida* and the *Alabama*.<sup>1</sup> The government of Great Britain did not admit these rules to have been in force during our Civil War "but in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future" agreed that "the Arbitrators should assume that it had undertaken to act upon the principles set forth in these rules." By Article VI our case which was already very strong was made absolutely secure.<sup>2</sup>

A comparison of the cardinal points of the treaty with the expressions of Fish in his private letter of the summer of 1869 and in his confidential conversation with Thornton of November 20, 1870<sup>3</sup> will show how directly and effectually our Secretary of State wrought during his "twenty months' secret diplomacy."<sup>4</sup>

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<sup>1</sup> See my vol. iv. pp. 80, 85.

<sup>2</sup> *Ibid.*, p. 95.

<sup>3</sup> *Ante.*

<sup>4</sup> Moore, p. 532.

On May 10, 1871 the Treaty was sent to the Senate and at once referred to the Committee on Foreign Relations of which Sumner was no longer the chairman or even a member. Incensed at his malignant opposition to the San Domingo enterprise and especially at his speech entitled "Naboth's Vineyard" Grant had pursued him with unrelenting vigour. He appealed to the senators who were devoted to the administration, to depose Sumner from the chairmanship of his committee and on the assembling of the new Congress, [the Forty-second, March 4, 1871,] this was accomplished by the Republican senatorial caucus. The reason assigned was that he no longer maintained personal and social relations with the President and Secretary of State. That undoubtedly had weight with some senators and Sumner's position in regard to the settlement of the Alabama claims, as disclosed in his speech on the Johnson-Clarendon treaty and his "hemispheric flag-withdrawal memorandum," influenced others; but the moving spirit in the affair was Grant and the real cause of the deposition was the share Sumner had had in the defeat of the San Domingo scheme and the unhappy incidents that followed in its train.<sup>1</sup>

Grant's insistence on the deposition of Sumner must go down in history unjustified. If it was done, as I believe, out of pure vindictiveness, it was a revenge unworthy of so great a general in the President's chair. If it was done as a matter of policy or supposed necessity, the policy was mistaken and the necessity unreal. It was by no means necessary to depose Sumner in order to secure the ratification of the Treaty of Washington.

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<sup>1</sup> An interesting account of this is given by Pierce, vol. iv. p. 469. In the main, the senators who favoured the San Domingo treaty were for the deposition of Sumner although there were exceptions. Edmunds voted against the treaty but was active in promoting Sumner's deposition. Five senators who favoured the treaty voted against the deposition. Cf. pp. 445, 471.

On January 15 when Morton heard from Fish that Patterson, a member of the Committee on Foreign Relations, approved of the Secretary's proposed settlement he said, on the assumption that Sumner would oppose it, that "gives a majority of the committee and there can be no doubt of the Senate."<sup>1</sup> It seems to me that Sumner was entitled to retain this place<sup>2</sup> which he had filled worthily for ten years. Of course he had made mistakes, of which the speech on the Johnson-Clarendon treaty and the "hemispheric flag-withdrawal memorandum" were the chief. But his bark was worse than his bite: indeed he ended with voting for the Treaty of Washington.<sup>3</sup> He had been an efficient helper of Lincoln and Seward during the Civil War and he and Seward, despite their antagonism on domestic questions during the stormy period of Johnson's administration, were able to co-operate in a friendly manner in all matters of foreign policy. In disputes he had generally been on the right side; his private letters and conversations bear witness to sound ideas and correct action; his influence had been used for peace and for a dignified diplomacy.

When apologists for Sumner, by way of implying that the wrong was wholly on one side, affirm that Lincoln would never have acted thus towards the senator,<sup>4</sup> it is fair to reply that Boutwell, Cox and Judge Hoar differed with Grant on San Domingo but that Boutwell nevertheless maintained a steady loyalty to his chief, that Cox preserved his affection and that Judge Hoar remained his steadfast friend for the whole of his life. Had the opposition to San Domingo been

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<sup>1</sup> Fish's diary, C. F. Adams, p. 146, note.

<sup>2</sup> C. F. Adams presents cogently a different view, p. 180. See reply by D. H. Chamberlain, pamphlet.

<sup>3</sup> For the cajolery practised by Hoar, Northcote and de Grey and Ripon to secure the support of Sumner, see C. F. Adams, p. 184.

<sup>4</sup> See my vol. v. p. 55.



headed by a man more gentle or more reasonable than it lay in Sumner's nature to be, Grant and such a man would have had no quarrel.

On May 24 [1871], the Treaty of Washington was ratified by the Senate.<sup>1</sup> Great Britain appointed Chief Justice Alexander Cockburn as arbitrator; the United States, Charles Francis Adams. The King of Italy, the President of the Swiss Confederation and the Emperor of Brazil named respectively Count Sclopis, Jacques Staempfli and Vicomte d'Itajubá.<sup>2</sup> All three of the neutral arbitrators were eminently qualified for their position.<sup>3</sup> Lord Tenterden was the British agent and Sir Roundell Palmer, the counsel. J. C. Bancroft Davis was agent for the United States and William M. Evarts, Caleb Cushing and Morrison R. Waite the counsel.<sup>4</sup>

On December 15, 1871 the proceedings commenced in the Salle des Conférences of the Hotel de Ville in Geneva.<sup>5</sup> Sclopis was made President of the Tribunal. Davis and Tenterden presented the cases of their respective governments. The Tribunal directed that the counter cases be delivered to the Secretary on or before April 15, 1872 and adjourned until the 15th of the following June.

The document entitled "The Case of the United States" is not one for an American to be proud of. It harped on the concession of belligerent rights to the Confederacy and stated what was incorrect when it said, "Her Majesty's Government was actuated at that time by a conscious un-

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<sup>1</sup> The vote was 50 : 12. The 12 were 10 Democrats, 2 Republicans. But Bayard voted for it while Thurman voted against it. *Executive Journal*, vol. xviii. p. 108.

<sup>2</sup> More frequently called Baron.

<sup>3</sup> See Moore, p. 557.

<sup>4</sup> B. R. Curtis and William M. Meredith were invited to act as counsel but were unable to accept. Moore, pp. 557, 682; Paper on Meredith by R. L. Ashhurst.

<sup>5</sup> Moore, p. 559. The room is sometimes spoken of as the "Salle des Mariages," *ibid.*, p. 682.

friendly purpose towards the United States.”<sup>1</sup> This occurs in the first chapter entitled the “Unfriendliness of Great Britain” wherein much that is true is irrelevant and discourteous. What was it to us except as matter of history that “the leading members of the British government” and “the classes” were personally unfriendly? We certainly did not want money on that account; and England’s manly expression of regret at the escape of the *Alabama*, in the treaty of Washington, should have salved our wounded feelings, so far at any rate as this lawsuit was concerned. The contentions in the American case, writes Charles F. Adams “were advanced with an aggressiveness of tone and attorney-like smartness, more appropriate to the wranglings of a quarter sessions court than to pleadings before a grave international tribunal.” Sir Roundell Palmer afterwards wrote “Its tone [that of the American case] was acrimonious, totally wanting in international courtesy.”<sup>2</sup> These objectionable statements and arguments of Bancroft Davis, so far as I have been able to discover, did not in the least strengthen our cause. The three neutral arbitrators had to be won and they were won by demonstrating that England had not observed with due diligence the neutrality which she had declared and that, in the cases of the *Florida* and the *Alabama*, she had been partial to the Southern Confederacy.

But Chapter I was not the worst feature in the case of the United States. Chapters I–V were submitted for advice to President Woolsey, Judge Hoar, Caleb Cushing and Hamilton Fish but in Chapter VI Bancroft Davis gave himself a free hand<sup>3</sup> and almost wrecked the arbitration. He revived the national or indirect

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<sup>1</sup> Geneva Arbitration, vol. i. p. 31. I examined this subject in my vol. iii. p. 420, note 1 and, were I now to revise what I then wrote, I should state my conclusions more positively. Bancroft (Seward, vol. ii. p. 177) and C. F. Adams (The Treaty of Washington, p. 96) have thoroughly refuted the American contention.

<sup>2</sup> C. F. Adams, p. 190, note.

<sup>3</sup> Geneva Arbitration, vol. iv. p. 3.

claims which had first been formulated by Sumner in his speech on the Johnson-Clarendon treaty. He asked for damages "for the transfer of the American commercial marine to the British flag in consequence of the acts of the rebel cruisers."<sup>1</sup> But this, he might well have added in the words of Charles Sumner, is "only an item in our bill." The fourth day of July, 1863,<sup>2</sup> Davis proceeded, "saw the aggressive force on land of the insurrection crushed. From that day its only hope lay in prolonging a defence, until by the continuance of the permitted violations of British neutrality by the insurgents, the United States should become involved in a war with Great Britain. . . . Thus the Tribunal will see that after the battle of Gettysburg, the offensive operations of the insurgents were conducted only at sea through the cruisers; and observing that the war was prolonged for that purpose will be able to determine whether Great Britain ought not in equity to reimburse to the United States the expenses" of the war after July 4, 1863. This out-Sumnered Sumner; inasmuch as the senator had spoken to his brother senators in confidential session whilst Bancroft Davis was pleading in the eyes of the world before a great international tribunal.

When England fully comprehended "The Case of the United States" the excitement in the London press and in both houses of Parliament was intense. It is indubitable that the British high commissioners who negotiated the Treaty of Washington, and the cabinet which discussed it word by word,<sup>3</sup> had not the least idea that any such indirect claims would be presented at Geneva.<sup>4</sup> Gladstone, who was then Prime Minister, declared truly in the House of Commons that it would amount "almost to an interpretation of insanity to suppose that

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<sup>1</sup> Geneva Arbitration, vol. i. p. 187.

<sup>2</sup> Gettysburg and Vicksburg.

<sup>3</sup> Life of Forster, Reid, vol. ii. p. 24.

<sup>4</sup> On the misunderstanding, see Moore, vol. i. p. 628 *et seq.*; Life of Gladstone, Morley, vol. ii. pp. 406, 408.

any negotiators could intend to admit, in a peaceful arbitration . . . claims which not even the last extremities of war and the lowest depths of misfortune would force a people with a spark of spirit . . . to submit to at the point of death.”<sup>1</sup> Some of the Cabinet Ministers favoured withdrawing from the arbitration; but, three at least among them, William E. Forster, de Grey and Ripon and Lord Granville (the English Foreign Secretary), worked hard to save the Treaty although it seemed well-nigh impossible. The English protested against any consideration of the indirect claims; and yet Charles Francis Adams, who was passing through London on his way home, told Forster [February 9, 1872] that if Great Britain insisted on the absolute exclusion of the indirect claims America must withdraw; and, if she did withdraw, “the arbitration was at an end, and America would never make another treaty.”<sup>2</sup> When Adams arrived home he had a conference with the President and Secretary of State. Fish, Granville, Thornton, and Schenck, all of them eager to save the arbitration, could easily have come to an agreement; but in the winter and spring of 1872, there was much opposition to Grant, and his re-election (for this was presidential year) was by no means certain; consequently Fish had to pay some regard to American public sentiment. An unsuccessful Fenian raid into Canada from St. Albans and Malone had taken place in 1870; another attempt on the Pembina frontier in 1871 had been frustrated by United States troops:<sup>3</sup> in both cases our government

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<sup>1</sup> Moore, p. 626; Morley, p. 406. Gladstone estimated “the war prolongation claim” at 1600 millions sterling. Life of Forster, Reid, vol. ii. p. 24; C. F. Adams, p. 102.

<sup>2</sup> C. F. Adams, p. 192; Life of Forster, Reid, vol. ii. p. 25.

<sup>3</sup> Dissenting opinion of Cockburn, Geneva Arbitration, vol. ii. pp. 258-260; *The Nation*, June 2, 1870, pp. 344, 347. See E. A. Sowles, “Fenianism,” in Vermont Hist. Soc. Proceedings 1880; New York *Tribune*, May 24-June 1. The Fenians from St. Albans may not have crossed the Canadian line. For the Pembina affair, see Begg, Northwest, vol. ii. pp. 68-72.



had used due diligence. But these raids pointed to the possibility of a formidable Irish demonstration against any supposed truckling to England, and of the consequent inducement of a public sentiment with which an administration that sought an approval by the people might find it difficult to deal. The mischief of Sumner's speech on the Johnson-Clarendon treaty was still afoot, goading to Anglophobia. Sumner, who eagerly desired the defeat of Grant, could easily have roused the country against the administration by a stirring appeal for our insistence on the national or indirect damages; but he was no demagogue and, despite his private griefs, remained silent.

In England Gladstone felt the necessity of keeping together his cabinet which was now in a state of heated disagreement on the question; moreover, unless the indirect claims were excluded, he could hardly expect to hold his majority in the House of Commons. In the House of Lords Earl Russell was making a vigorous attack, announcing his intention "of blowing into the air both the Treaty and the Government with it."<sup>1</sup> The British government proposed a supplemental article to the Treaty which the President sent to the Senate with a request for counsel [May 14, 1872]. The Senate amended the article; its amendment declared against "claims for remote or indirect losses" by both governments in the future and said that the President and Senate consented that the United States should make no claim for "indirect losses" before the Tribunal of Arbitration at Geneva.<sup>2</sup> This amendment was not satisfactory to England but it is difficult to see why it should not fully

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<sup>1</sup> Granville to Bright, *Life of the Second Earl Granville*, Fitzmaurice, vol. ii. p. 91.

<sup>2</sup> Geneva Arbitration, vol. ii. p. 526; *Executive Journal*, vol. xviii. p. 264. The vote on its passage was 43: 8. Sumner offered an amendment that the Senate would not give advice on the matter and then voted no on the amended article.

have met the views of Gladstone's cabinet. Nevertheless, the amendment taken in connection with the conciliatory spirit in which it was made, proved to be of considerable moral advantage to Fish in continuing the negotiations. His despatch of April 23 to Schenck was a frank statement of the position of the American government. "Neither the government of the United States," he wrote, "nor so far as I can judge any considerable number of American people have ever attached much importance to the so-called 'indirect claims' or have ever expected or desired any award of damages on their account.<sup>1</sup> . . . You will not fail to have noticed that through the whole of my correspondence we ask no damages on their account; we only desire a judgment which will remove them for all future time as a cause of difference between the two Governments. . . . In the correspondence I have gone as far as prudence will allow in intimating that we neither desired nor expected any pecuniary award and that we should be content with an award that a State is not liable in pecuniary damages for the indirect results of a failure to observe its neutral obligations. . . . It is strange that the British Government does not see that the interests of this government do not lead them to expect or to desire a judgment on the 'indirect claims'; and that they fail to do justice to the sincerity of purpose, in the interests of the future harmony of the two nations which has led the United States to lay those claims before the tribunal at Geneva."<sup>2</sup> This

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<sup>1</sup> The "indirect damage humbug" Grant called it in 1877, C. F. Adams, p. 189.

<sup>2</sup> C. F. Adams, p. 190, note; Geneva Arbitration, vol. ii. p. 475. In the subsequent correspondence Fish appears well, *ibid.*, pp. 484-582. "Politics" in the sense of "the schemes and intrigues of political parties" played as great a part in England as in the United States. While Fish had an eye to the presidential election in the autumn, Gladstone, encountering a "decline of popularity" (Morley, vol. ii. p. 377), constantly bore in mind the necessity of using means to maintain his majority in the House of Commons. Earl Russell, his old political associate, proved a thorn in his side. Russell

was a very different doctrine from Sumner's and Bancroft Davis's; undoubtedly the substance of the despatch was imparted to Granville and Gladstone and did much to bring about the final understanding. Adams arrived in England on his return to Geneva at about the same time as this despatch and had a satisfactory conference with Forster who together with Granville and Earl de Grey and Ripon was doing his best to keep the treaty alive in the face of the opposition it met in their own party and from the Conservatives.<sup>1</sup>

To proceed now to Geneva, the Tribunal of Arbitration reassembled on the day fixed, June 15, 1872. Nothing was settled. The policy of the English was to secure an adjournment of the Tribunal for eight months in order that a supplementary convention might be made between the two governments.<sup>2</sup> "We must," Adams wrote, "decide upon rejecting the whole question of indirect damages; and I must set it in motion or nothing will come of it."<sup>3</sup> After a formal adjournment on June 17 the five arbitrators remained together for an unofficial conference. Cockburn was the recalcitrant member, having from the first opposed the arbitration and being now content to regard it as dead. If a middle ground was to be reached he must be won over. Both he and Adams spoke French perfectly and out of consideration for the three neutral arbitrators they used

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gave notice on April 12 that he would move an address asking that all proceedings under the treaty be stopped until the indirect claims were withdrawn. On May 13, he said in the House of Lords, "The case appears to me to be one between the honour of the Crown of this country and the election of General Grant as President." Postponing it for a time, he on June 4 moved his address in a long speech, but next day, because of a satisfactory cablegram from Fish, withdrew his motion — *Parliamentary Debates*, 3d Ser. vol. cxx. p. 1137, vol. cxxi. pp. 647, 993, 1117-1122, 1266.

<sup>1</sup> Disraeli however, so Gladstone wrote, behaved "with caution and moderation" and a portion of the opposition sympathized with him. *Life of Gladstone*, Morley, vol. ii. p. 407.

<sup>2</sup> *Geneva Arbitration*, vol. iv. p. 17.

<sup>3</sup> *Life of Adams*, C. F. Adams, p. 394.

it in the conversation which ensued. Adams adroitly led Cockburn up to intimating "that an extra-judicial opinion might be made which, if satisfactory to the United States so far as to extinguish their demand, would not be disputed by Great Britain." "Will such a step taken here satisfy your government and remove all obstacles to progress?" asked Adams. "I think it will," replied Cockburn. "In that event," said Adams, "I am prepared to make a proposition. I shall be assuming a heavy responsibility; but I shall do so not as an arbitrator representing my country but as representing all nations." The result of Adams's initiative is seen in the protocol of June 19. Count Sclopis "on behalf of all the arbitrators" made a statement, the important decision contained therein being: "The arbitrators think it right to state that, after the most careful perusal of all that has been urged on the part of the Government of the United States in respect of these claims [for indirect damages], they have arrived, individually and collectively, at the conclusion that these claims do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations, and should, upon such principles, be wholly excluded from the consideration of the tribunal in making its award."<sup>1</sup> The brief note of Forster penned in the House of Commons to his wife in order that she might have the earliest news, exhibits the glee of the British cabinet: "Hip, hip, hip, hooray! The final settlement of the indirect claims came during questions to-day and Gladstone announced it amid great cheers on our side and the disgust of the Tories."<sup>2</sup> On June 25 Bancroft Davis announced the plain and direct acquiescence of the President of the United States in the decision of the arbitrators and two days later

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<sup>1</sup> Geneva Arbitration, vol. iv. p. 20.

<sup>2</sup> Life of Forster, Reid, p. 33.



Tenterden announced the indirect, cautious and hesitating assent of Her Majesty's Government.<sup>1</sup>

The Tribunal reassembled. The proceedings went on. The arguments of the counsel were made and on August 21, "after deliberation a majority of four to one declared the tribunal sufficiently enlightened."<sup>2</sup> Two days later the arbitrators commenced to vote. To the questions whether Great Britain was liable as to the *Sumter*, *Nashville*, *Georgia*, *Tallahassee*, and *Chickamauga* the Tribunal answered unanimously "no" for each of these vessels. As to the *Retribution* Adams and Staempfli said, yes, Cockburn, Itajubà and Sclopis, no. As to the *Alabama* the Tribunal answered unanimously, yes. As to the *Shenandoah* Adams, Staempfli and Sclopis answered, "yes ; but only for the acts committed by this vessel after her departure from Melbourne on the 18 February, 1865." Itajubà and Cockburn answered, no. The question as to the *Florida* was not decided until August 26, Adams, Itajubà, Staempfli and Sclopis voting, yes, Cockburn, no. On September 2 at the twenty-ninth conference, "after a detailed deliberation, a majority of the tribunal of four to one [Cockburn being the dissentient] decided . . . to award in gross the sum of \$15,500,000 to be paid in gold by Great Britain to the United States" for the damages done by the *Florida*, *Alabama* and *Shenandoah*.<sup>3</sup> The almost uniform agreement with Adams of Sclopis, Staempfli and Itajubà, all of them intelligent and candid men,<sup>4</sup> is sufficient proof of the justness of the case of the

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<sup>1</sup> Geneva Arbitration, vol. iv. p. 21.

<sup>2</sup> Ibid., p. 35. I have stated the case against England for the damages done by the *Florida* and *Alabama* in my vol. iv. p. 80. According to the rules of historical evidence there could be no doubt about the liability of England. Before the Tribunal, the Americans were necessarily obliged to make out a legal case.

<sup>3</sup> Geneva Arbitration, vol. iv. pp. 37, 38, 46.

<sup>4</sup> Lord Tenterden had not a high opinion of Staempfli ; and Cockburn thought meanly of Staempfli and Sclopis and not highly of Itajubà. Tenterden wrote to Granville on Aug. 1: "From the pertinacious manner in

United States ; and in paying over the money England made reparation for her lack of due diligence in enforcing the neutrality which she had declared.

All the conferences until the thirty-second and last were held with closed doors but now, on September 14, this rule was suspended. The cantonal government of Geneva came in a body as guests of the Tribunal. The Secretary read the award in English "amid the profound silence of the audience." Four arbitrators signed it, Cockburn dissenting. "Amid salvos of artillery discharged by order of the cantonal government Count Sclopis declared the tribunal to be dissolved." <sup>1</sup>

From June 15 when Adams took the initiative there was but one jarring note, and that was Cockburn's.<sup>2</sup> He kicked at the new rules laid down by the treaty of Washington ; point after point he disputed like a wrangling attorney ; and feeling that the case was going against him he was at all times strenuous for delay. "We *are* here as *judges*," he said at one session, "and as

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which M. Staempfli finds excuses for deciding against England, and the ignorant rough and ready way in which he gives judgment without a pretence of waiting to hear argument, one would be led to believe that he had some motive of hostility to England. I have, however, no proof of it. He certainly has managed to overdo the part, and when opinions and judgments are published he will probably be severely criticised—to which he is most likely profoundly indifferent." Cockburn wrote to Granville on Aug. 25: "Things have gone badly with us here. I saw from our first sitting in July that they would. We could not have had a worse man than Staempfli—or next to him than the President [Sclopis]. The first a furious Republican, hating monarchical government, and ministries in which men of rank take part, ignorant as a horse and obstinate as a mule. The second vapid and all anxiety to give a decision which shall produce an effect in the world, and to make speeches about 'civilization,' 'humanity,' etc., etc., in short *un vrai phrasier*. Baron Itajubà is of a far better stamp, but not sufficiently informed and very indolent ; and apt by reason of the latter defect to catch hold of some salient point without going to the bottom of things, with the further defect of clinging to an opinion once formed with extreme tenacity." Life of Granville, Fitzmaurice, vol. ii. pp. 100, 101.

<sup>1</sup> Moore, p. 652 ; Geneva Arbitration, vol. iv. p. 48.

<sup>2</sup> For a different view of Cockburn, see Selborne's Memorials Personal and Political, vol. i. pp. 236, 244, 246, 247, 249, 250.

such must deliberate slowly and not act hastily." Count Sclopis mildly rebuked the Chief Justice. "It was not necessary for Lord Cockburn to state that we are here as judges. We all have felt from the commencement and still feel a deep appreciation of our duties as such. I have presided for many years in the highest tribunal of my country. There the facts are universally discussed first, then the principles which govern them."<sup>1</sup> "What is the matter with your arbitrator?" wrote a friend at Geneva to Granville, soon after the business sittings had commenced. "He [Cockburn] acts as if he was possessed. Last week he insulted the rest of us, one at a time, but to-day he insulted us all in a bunch. Does he yet mean to break up the Treaty?" Obviously commenting on the behaviour of Cockburn, Tenterden wrote to Granville, "The effect thus far is very damaging to our cause."<sup>2</sup> Adams reached the height of the three neutral arbitrators. The truth is, there were four judges on the Tribunal, but Cockburn was not one of them: he was simply Great Britain's advocate. Adams, on the other hand, would not be outdone in candour or in courtesy by the three neutral arbitrators. "The arbitrators," he said, "appear to me at least to have a duty to the parties before the tribunal to state their convictions of the exact truth without fear or favor" — a sentiment he thoroughly lived up to, receiving the commendation of the English government as well as of his own.<sup>3</sup> He went out of his way to pay a graceful compliment to Earl Russell,<sup>4</sup> in striking contrast to the animadversions contained in "The Case of the United States."

As early as July 22, the decision of the Tribunal in the case of the *Florida* was foreshadowed; but Cockburn disputed the question in "vigorous language and with

<sup>1</sup> Moore, p. 648.

<sup>2</sup> Life of Granville, Fitzmaurice, vol. ii. p. 102.

<sup>3</sup> Moore, p. 664; Geneva Arbitration, vol. iv. p. 546; Parliamentary Papers, 1873, vol. lxxiv. part i. pp. 382-384.

<sup>4</sup> See my vol. iv. p. 91.

great warmth of manner.”<sup>1</sup> At the last session when he refused to sign the award he handed in his dissenting opinion<sup>2</sup> in which is exhibited the ill nature of an attorney who has lost his case. Thrice as long as the opinions of all the other arbitrators put together, it is a dreary and ill-digested argument, interesting only in the venom with which it was charged. Cockburn was justly irritated at “The Case of the United States” but instead of maintaining a contemptuous silence on points which were not really before the Tribunal, as a man in his position might well have done, he set himself the futile and unworthy task of giving Bancroft Davis recrimination for recrimination.<sup>3</sup>

But when all is said and done, be it remembered that the modern world had not up to that time had an example of settlement by peaceful process of law of such irritating questions as these, in approaching which it was extremely difficult for either nation to take the other’s view. Geneva, staid chamberlain of mighty issues, has never helped to crown a worthier undertaking than when she celebrated this agreement between the representatives of Italy, Switzerland, Brazil and America. Of course one is glad to win a lawsuit; but in this affair Great Britain’s expression of regret and the adoption

<sup>1</sup> Moore, p. 649.

<sup>2</sup> It is not entirely clear that he then handed in his long opinion. He “stated the grounds of his own decision” but he may not have published the voluminous document until later.

<sup>3</sup> In one respect, he modified his first draft, owing to an appeal from Lord Granville, who wrote to him on Aug. 21: “I have read what you have sent of your judgment with great admiration. It is written with a clearness almost peculiar to yourself. It is as pleasant to read, and as easy to understand, as a novel. I regret, however, that you should have thought it necessary to preface it with an attack upon the Treaty, the negotiations and the Government. . . . It does not appear to me to be congruous that England’s representative should throw dirt upon her Government and its diplomatic representatives.” *Life of Granville, Fitzmaurice*, vol. ii. p. 103. In my use of this work I have been helped by a review of it in MS. by Charles F. Adams.



of new rules to govern Anglo-American relations are what Americans value most. Those among us, who believe that the maintenance of peace and of no other than a friendly rivalry between England and the United States, is of vast importance to the race itself and to all the world besides must feel a thrill of satisfaction on recalling the amicable and dignified adjustment of this difference so fraught with peril. We remember too, the men who effected the adjustment: especially, Hamilton Fish and Grant, Sir John Rose, Earl de Grey and Ripon and Sir Stafford Northcote, Gladstone, Granville, and Forster. And the hero of the Tribunal of Arbitration was Charles Francis Adams.











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